June 13, 2024

Submitted via eplanning (https://eplanning.blm.gov/eplanning-ui/project/2016719/510)

ATTN: HQ GRSG RMPA
Bureau of Land Management
440 West 200 South, Suite 500
Salt Lake City, Utah 84101

RE: Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement

Dear Bureau of Land Management,

Please accept and fully consider these comments on behalf of the ***following 19 organizations***: Audubon Great Plains (NE/ND/SD), Audubon Rockies (CO/UT/WY), Audubon California, Colorado Wildlife Federation, Conservation Colorado, Idaho Wildlife Federation, Montana Audubon, Montana Wildlife Federation, National Audubon Society, National Wildlife Federation, Natural Resources Defense Council, North American Grouse Partnership, North Dakota Wildlife Federation, Nevada Wildlife Federation, The Wilderness Society, Utah Wildlife Federation, Wild Montana, Wyoming Outdoor Council, Wyoming Wildlife Federation.

Together we recognize the important role that the Bureau of Land Management (BLM) plays in managing a large proportion of our nation's public lands, on behalf of current and future generations. Our organizations are proud to represent millions of Americans – at state and national scales - who care about protecting wildlife, stopping habitat loss, conserving biodiversity, and maintaining intact ecosystems. For this reason, we thank the BLM for initiating this planning process to conserve the greater sage-grouse (GRSG) across its range and appreciate the broad benefits of doing so.

Our organizations have been involved in GRSG conservation for many years, including participation in the 2015 and 2019 planning processes. We hope that this third attempt at developing resource management plan amendments (RMPAs) and records of decision (RODs) for GRSG conservation will result in plans that reverse recent declines in GRSG populations, ensure that the species continues not to warrant listing as a threatened or endangered species, protect intact landscapes, achieve consistency across the species' range, and prove durable. The following comments are offered in that spirit, and we ask that the BLM fully consider them and address our concerns and recommendations as it proceeds with preparation of a final environmental impact statement (EIS), RMPAs, and RODs.

We hope this planning process will result in durable GRSG habitat management plans that can be successfully implemented over time and will not result in additional plan revisions in the near term.

These comments represent our in-depth review of previous planning processes, the latest science, and the proposed management actions presented in the draft EIS. We have endeavored to provide thoughtful and defensible recommendations on how to meet the needs and purpose outlined by the BLM for this planning process.

I. Summary

This is an undeniably challenging planning process. The BLM is called upon to balance numerous conflicting land allocations and uses across millions of acres of rangeland, and to coordinate its GRSG conservation efforts with 10 different state governments. We applaud the BLM for undertaking this planning process, and we believe that within the draft EIS, the agency has successfully identified numerous management approaches that can result in durable and effective GRSG conservation. However, we believe that there is more work to be done. Rather than adopt its preferred alternative (alternative 5) as written, we recommend that the BLM adopt a variety of management approaches from across the alternatives analyzed, and we recommend additional changes and improvements to ensure that the BLM's GRSG management reflects the best available science. We recommend the agency:

- **Manage GRSG habitat to reverse ongoing population declines.** Management plans should be achievable, consistent, and durable. Management should conserve intact landscapes and functioning sagebrush ecosystems, and support populations of GRSG sufficient to help avoid any listing under the Endangered Species Act of 1973 (ESA).
- **Use the best available science to identify and protect important GRSG habitat as priority habitat management areas (PHMA), and provide a higher level of protection for the "best of the best."** This approach will best allow the BLM to fulfill its multiple-use mandate, locating GRSG conservation actions where they will be most effective and authorizing other land allocations where they least conflict with GRSG conservation.
- **Apply the full mitigation hierarchy to all GRSG-impacting activities.** While compensatory mitigation can be used to offset impacts to GRSG, it is imperative that compensatory mitigation be used after impacts have been first avoided and minimized to the maximum extent practicable, and that it be done in a manner that addresses all indirect and cumulative impacts.
- **Use a consistent and transparent adaptive management approach to address future changes in conditions.** Adaptive management should be consistent, should address population and habitat triggers, and should be carried out in partnership with state wildlife agencies, affording them opportunities to identify triggers and initiate adaptive management, to make corrections if the BLM identifies a trigger in error, and to work with the BLM in addressing triggers.
- **Use the best available science to establish lek buffers.** Recent years have seen significant research into GRSG behavior, revealing that older approaches to lek buffers, many of which persist in the draft EIS, are inadequate to effectively protect GRSG.
- **Manage mineral development to avoid and minimize impacts to GRSG.** Currently, the most prevalent land allocations on BLM-managed lands that are incompatible with GRSG persistency are mineral development, including oil and gas, other fluid, and solid minerals.

Areas of lesser importance for GRSG should be prioritized for these uses and important GRSG habitat should be subject to closures, stipulations, and withdrawals, as appropriate.

- **Apply disturbance caps consistently.** Disturbance caps are an effective backstop for identifying and responding to indirect and cumulative impacts to GRSG habitat that otherwise might go unaddressed. The BLM should apply them in a manner consistent with the best science, and with a minimum of exceptions.
- **Exclude renewable energy development and high voltage transmission lines from important GRSG habitat.** The impacts of renewable energy on GRSG are significant, and current projections indicate that there is more than sufficient land available for renewable energy development outside of high-quality GRSG habitat. The BLM should exclude renewable energy developments from PHMA and avoid impacts to important GRSG habitat within general habitat management areas (GHMA).
- **Manage wild horses and burros to limit impacts on GRSG.** When wild horse populations exceed appropriate management levels (AMLs), GRSG populations suffer. The BLM must manage wild horses and burros within their AMLs.
- **Manage livestock grazing to conserve GRSG.** Unlike most other competing land allocations, livestock grazing can be consistent with GRSG population health, and can even improve habitat conditions for GRSG. To achieve this, the BLM must manage grazing to meet land health standards (LHS) and must consider specific circumstances unique to each location.

Each of these issues is more fully addressed in the following sections.

II. Principles for GRSG conservation.

A. Reverse ongoing GRSG declines through a strong management approach.

The GRSG has sustained consistent and dramatic population losses over the last 60 years. Range-wide, the population has declined 80% since 1965, and 37% just since 2002.[1] Even since adoption of the BLM's GRSG management plans in 2015, population declines have continued.[2]

This is deeply concerning because the goal of the BLM's 2015 planning process was to "conserve, enhance, and restore GRSG habitat across the species' remaining range. . . and to provide greater certainty that BLM resource management plan decisions in GRSG habitat . . . can

[1] Peter S. Coates, Brian G. Prochazka, Michael S. O'Donnell, Cameron L. Aldridge, David R. Edmunds, Adrian P. Monroe, Mark A. Ricca, Gregory T. Wann, Steve E. Hanser, Lief A. Wiechman, and Michael P. Chenaille, Range-wide Greater Sage-Grouse Hierarchical Monitoring Framework: Implications for Defining Population Boundaries, Trend Estimation, and a Targeted Annual Warning System, U.S. Geological Survey Open-File Report 2020-1154. https://doi.org/10.3133/ofr20201154, https://pubs.usgs.gov/of/2020/1154/ofr20201154.pdf

[2] B. G. Prochazka, P. S. Coates, C. L. Aldridge, M. S. O'Donnell, D. R. Edmunds, A. P. Monroe, Se. E. Hanser, L. A. Wiechman, and M. P. Chenaille, Range-wide population trend analysis for greater sage-grouse (*Centrocercus urophasianus*)—Updated 1960–2023, U.S. Geological Survey Data Report 1190, 2024. https://doi.org/10.3133/dr1190, https://pubs.usgs.gov/dr/1190/dr1190.pdf

lead to conservation of the GRSG and other sagebrush-steppe-associated species in the region."[3] In 2010, the U.S. Fish and Wildlife Service (FWS) determined that the GRSG warranted listed under the ESA, in part due to a lack of regulatory mechanisms protecting the species. As part of its listing determination, the FWS noted that the BLM managed over 50% of the remaining GRSG range, and suggested numerous opportunities for the BLM to adopt regulatory and other land-use practices to conserve GRSG on BLM-managed lands.[4]

Subsequently, the BLM developed and adopted the 2015 GRSG RMPAs, which have governed the BLM's GRSG management ever since.[5] In 2015, the FWS determined that the GRSG did not warrant listing under the ESA, in large part because of BLM (and other federal) land management plans.[6] Specifically, the FWS anticipated that the BLM plans would be "implemented for the next 20–30 years" and emphasized that "[t]he BLM [has] committed to full funding and implementation of these plans, and [has] included monitoring and adaptive management to ensure their long-term effectiveness."[7]

The GRSG's range-wide population moves in cycles, oscillating between periods of population growth and decline. Researchers have identified 6 distinct cycles, each defined by a low point (or nadir) in the population, using as a baseline the first identified low point in 1965. Range-wide population trends are evaluated not on an annual basis, which are highly variable, but by observing increases or decreases from low point to low point over multiple years. Based on population growth in 2022 and 2023, researchers have concluded that 2021 likely represented the most recent low point in GRSG populations.[8]

The fact that the GRSG's range-wide population appears to have reached its most recent low point and is now increasing represents an opportunity for the BLM, states, and other partners to redouble efforts to protect remaining GRSG populations and habitat, and to restore additional habitat in order to turn the current (temporary) upswing in population into permanent gains that will begin to reverse the species' decades-long decline. Both the long-term decline and the small gains of the last two years can be seen in the graphic below (Figure 1) from Prochazka et al. 2024.[9]

As it continues this planning process and moves from the draft EIS to a final EIS and accompanying RMPAs and RODs, the BLM should regard the 2015 GRSG plans as a starting point that must be improved upon. We recognize that, while the 2015 plans represent one of the

[3] E.g. Bureau of Land Management, ROD and ARMPAs/ARMPs for the Rocky Mountain GRSG Sub-Regions, September 2015, S-2. https://eplanning.blm.gov/public_projects/lup/68346/88888/106396/HiLine_District_ROD.pdf

[4] 12-Month Findings for Petitions to List the Greater Sage-Grouse (Centrocercus urophasianus) as Threatened or Endangered, 75 Fed. Reg. 13975 (March 23, 2010).

[5] See discussion of subsequent amendments and litigation in section II.C.1.

[6] 12-Month Finding on a Petition to List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species, 80 Fed. Reg. 59858 (October 2, 2015).

[7] 12-Month Finding on a Petition to List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species, 80 Fed. Reg. at 59875.

[8] E.g. Prochazka et al., Range-wide population trend analysis for greater sage-grouse (*Centrocercus urophasianus*)—Updated 1960–2023.

[9] Prochazka et al., Range-wide population trend analysis for greater sage-grouse (*Centrocercus urophasianus*)—Updated 1960–2023, 4.

most comprehensive collaborative conservation planning efforts of our time, the 2015 plans were proposed to be weakened in 2019, are imperfect, allow for significant variation in management across state lines, have not been consistently implemented over the last 8+ years, and in some respects no longer reflect the best available science. All of these issues should be addressed, and we applaud the BLM for initiating this planning process to do just that. But we wish to emphasize that in all areas, should the continued goal be to ensure that a listing of the GRSG under the ESA is unnecessary, we need to see better outcomes for GRSG populations, and in many instances that will require more protective management approaches.

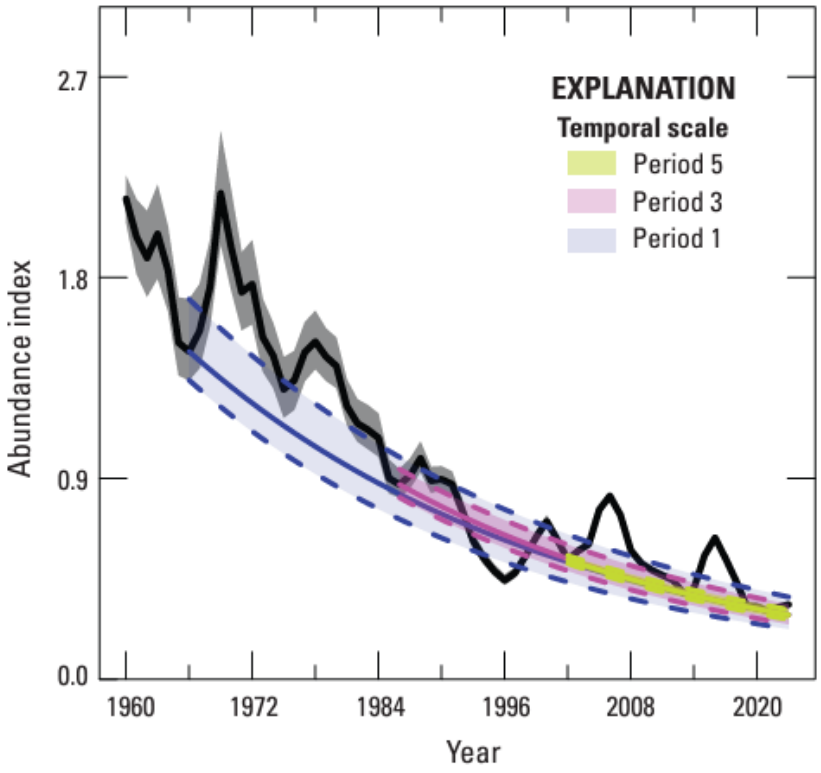

Figure 1. Abundance index (calculated as $\widehat{N}$ divided by 64-year mean of $\widehat{N}$) of greater sage-grouse (*Centrocercus urophasianus*) across their range from lek observations used to model population trends during 1960–2023. Median estimates (solid-colored lines) and 95-percent credible limits (dashed colored lines) of abundance trend during Period 5 (two oscillations), Period 3 (four oscillations), and Period 1 (six oscillations). Black trend line represents median estimates. Colored areas represent 95-percent credible limits of trend estimates. Grey shaded areas represent 95-percent credible limits on abundance index.

B. Protect and expand intact landscapes.

We appreciate the fact that in the draft EIS, the BLM has identified numerous land allocations and management actions that can adversely impact GRSG, and for those activities where there is new research, practical experience, or other information suggesting possible improvements to the 2015 GRSG RMPAs, proposed changes. Our comments will address all of them in detail. But the common thread that unites them is simple: GRSG, as well as approximately 350 other species that utilize the unique sagebrush ecosystem of the American West, depend on large, intact, connected habitats. At present, we are losing 1.3 million acres of functioning sagebrush habitat every year.[10]

While individual GRSG populations and management actions are important, we need to shift to a sagebrush biome focus that will more effectively address threats facing the entire ecosystem and the species the rely on it, including not only GRSG but also humans. The primary goal of this planning process should be to manage BLM lands for intact landscapes for GRSG across the range. Moreover, landscape fragmentation as a result of development and degradation allows for the spread of invasive annual grasses, which in turn alter fire cycles, and have led to staggering loss of GRSG habitat across the range. The importance of intact landscapes is not limited to PHMA, but includes GHMA as well. Otherwise we end up in a situation where we are managing for islands of habitat and isolated GSRG populations without adequate protections for corridors connecting those islands.[11]

The BLM's final rule on Conservation and Landscape Health (hereinafter Public Lands Rule), which will take effect on June 10, 2024, explicitly recognizes protection of intact landscapes as a management goal for the agency.[12] In the case of sagebrush habitat, the leading model for identifying intact land is the U.S. Geological Survey (USGS)'s Sagebrush Conservation Design (hereinafter SCD).[13] The SCD identifies 33.4 million acres of core sagebrush areas and 84.3

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[10] Kevin Doherty, David M. Theobald, John B. Bradford, Lief A. Wiechman, Geoffrey Bedrosian, Chad S. Boyd, Matthew Cahill, Peter S. Coates, Megan K. Creutzburg, Michele R. Crist, et al., A Sagebrush Conservation Design to Proactively Restore America's Sagebrush Biome, Open-File Report 2022–1081, U.S. Geological Survey, 2022. https://pubs.usgs.gov/of/2022/1081/ofr20221081.pdf

[11] See D. R. Edmunds, C. L. Aldridge, M. S. O'Donnell, and A. P. Monroe, "Greater sage-grouse population trends across Wyoming," *Journal of Wildlife Management* 82(2) (2018): 397-412, DOI:10.1002/jwmg.21386; A. W. Green, C. L. Aldridge, and M. S. O'Donnell, "Investigating impacts of oil and gas development on Greater Sage-Grouse," *Journal of Wildlife Management* 81(1) (2016): 46-57; Emma Suzuki Spence, Jeffrey L. Beck, and Andrew J. Gregory, "Probability of lek collapse is lower inside sage-grouse core areas—Effectiveness of conservation policy for a landscape species," *PloS ONE* 12(11) (2017): e0185885. https://doi.org/10.1371/journal.pone.0185885. Peter S. Coates, Brian G. Prochazka, Mark A. Ricca, Brian J. Halstead, Michael L. Casazza, Erik J. Blomberg, Brianne E. Brussee, Lief Wiechman, Joel Tebbenkamp, Scott C. Gardner, and Kerry P. Reese, "The relative importance of intrinsic and extrinsic drivers to population growth vary among local populations of Greater Sage-Grouse: An integrated population modeling approach," *The Auk* 135(2) (2018): 240–61. https://academic.oup.com/auk/article/135/2/240/5148801; S.E. Hanser, P.A. Deibert, J.C. Tull, N.B. Carr, C.L. Aldridge, T.C. Bargsten, T.J. Christiansen, P.S. Coates, M.R. Crist, K.E. Doherty, et al, Greater sage-grouse science (2015–17)—Synthesis and potential management implications: U.S. Geological Survey Open-File Report 2018–1017. https://pubs.usgs.gov/publication/ofr20181017

[12] Conservation and Landscape Health, 89 Fed. Reg. 40308, 40341 (May 9, 2024) (to be codified at 43 C.F.R. §6102.2).

[13] Doherty et al., A Sagebrush Conservation Design to Proactively Restore America's Sagebrush Biome, Open-File Report 2022–1081.

million acres of growth opportunity areas, which constitute the areas that most urgently need to be protected and restored, respectively. 17.3 million acres of core areas and 37.4 million acres of growth areas are on BLM-managed lands, and this data should be used alongside data on GRSG populations to prioritize areas for conservation and restoration.

There are numerous tools available to focus sagebrush conservation efforts on ecosystem function, including Threat-based Land Management[14] and the Defend the Core Framework.[15] Agencies, nonprofits, and state governments have all embraced these tools, and we urge the BLM to work in collaboration with them towards limiting and removing anthropogenic infrastructure to the maximum extent practical, restoring high quality, functional habitats, and defending against the spread of invasives to these areas.

In addition to the SCD framework, other criteria that the BLM should consider for identifying the best intact landscapes for GRSG include locations where high breeding densities of GRSG occur; where a preponderance of current federal ownership or adjacent state-owned land or protected areas serve to anchor conservation importance; and where distance from existing development and infrastructure can be maximized. This can be achieved by properly identifying and protecting PHMA and also high-value "best of the best" areas that are truly irreplaceable, as are described more fully in section III.C of these comments.

In considering ecological integrity of a landscape, the BLM should consider spatial and temporal patterns of functional vegetation groups, and seek to maximize indicators of desirable ecological conditions, such as native perennial herbaceous vegetation and sagebrush species, while minimizing undesirable conditions, such as invasive annual herbaceous vegetation and conifers encroaching on rangeland sites. Analysis of these indicators should use the best available science for identifying meaningful thresholds, ratios, or other relevant metrics based on regional differences between the Great Basin, Rocky Mountain, and Great Plains portions of the sagebrush biome. Taken together, these indictors should allow the BLM to identify landscapes where protection and restoration would best maintain ecosystem function.

Major advances in remotely-sensed datasets and mapping platforms allow the BLM to conduct this analysis with a transparent and empirical approach that was not available to the agency in 2015. Products including the Rangeland Assessment Platform[16] and especially the Western Association of Fish and Wildlife Agencies (WAFWA) Ecological Integrity Map[17] are ideally suited to facilitate this analysis at a state scale.

There are numerous threats to intact GRSG habitat, and as the BLM finalizes its management approach to these areas, it should work to the greatest possible extent to avoid, minimize, and

[14] D. Johnson, et al., Threat-Based Land Management in the Northern Great Basin: A Manager's Guide (Corvallis, Oregon: Oregon State University Press, 2019). https://catalog.extension.oregonstate.edu/pnw722

[15] Jeremy D. Maestas, Mark Porter, Matt Cahill, and Dirac Twidwell, Defend the core: Maintaining intact rangelands by reducing vulnerability to invasive annual grasses, *Rangelands* 44(3) (2022): 181-186. https://doi.org/10.1016/j.rala.2021.12.008

[16] Jones, M.O. et al.. "Innovation in rangeland monitoring: annual, 30 m, plant functional type percent cover maps for U.S. rangelands, 1984-2017," *Ecosphere* 9: e02430. https://doi.org/10.1002/ecs2.2430.

[17] Forthcoming.

mitigate their impacts.[18] The primary threat to GRSG is loss of habitat, including both direct loss of habitat due to conversion to other uses, and functional habitat loss due to habitat fragmentation and GRSG avoidance behavior of infrastructure and disturbed areas.[19]

Common sources of GRSG habitat destruction include oil and gas development, various types of mining (solid mineral development), renewable energy facilities, rights-of-way (ROWs) associated with the above such as pipelines and transmission lines, overutilization of rangelands by both domestic livestock and wild horses and burros, invasive grasses and woody species, and rangeland fire. All of these can further fragment habitat not directly impacted, including by reducing habitat connectivity, reducing opportunities for habitat and population expansion, and by creating landscape features such as tall structures that GRSG avoid at a distance.[20]

Of particular concern are non-anthropogenic impacts to GRSG, including invasive species and altered fire regimes. In many cases, however, these are functionally second-order (indirect) anthropogenic impacts because development activities alter landscapes and introduce landscape features such as linear ROWs or disturbed ground that enable these processes. Accordingly, proper land management approaches can reduce the threat posed by fire and invasives and help maintain intact landscapes.

Doing so would yield measurable benefits for GRSG. For example, in the Great Basin, 20.6% of GRSG PHMA have burned since 2000.[21] Hotter and drier conditions, combined with human-ignited fires, have increased the length of the fire season by 134 percent for this region,[22] and this trend shows no sign of slowing.

One of the major drivers of increased wildfires is a fire-invasive cycle characterized by nonnative grasses such as cheatgrass, red brome, medusahead, fountain grass, and ventenata. These fast-growing and fast-burning species become established in disturbed areas that lack slower growing, more resilient native species, and outcompete native species while degrading soil and water quality. Habitat fragmentation due to development and associated infrastructure can create vectors for invasive species spread as well as anthropogenic wildfire ignition sources, exacerbating this threat. The problems of fire and invasive species are best addressed through a preventative approach, i.e. maintaining intact landscapes and native vegetation. Current estimates indicate most invasive plant-management programs address less than 10% of the average annual

[18] See discussion of mitigation in section IV of these comments.

[19] D. E. Naugle, K. E. Doherty, B. L. Walker, H. E. Copeland, M. J. Holloran, and J. D. Tack, "Sage-Grouse and Cumulative Impacts of Energy Development," in *Energy Development and Wildlife Conservation in Western North America*, ed. D. E. Naugle (Washington DC: Island Press, 2011), https://doi.org/10.5822/978-1-61091-022-4_4

[20] For instance, tall features such as transmission lines have been documented to cause avoidance behavior at a minimum of 4 miles, and perhaps farther. E.g. D. J. Manier, Z. H. Bowen, M. L. Brooks, M. L. Casazza, P. S. Coates, P. A. Deibert, S. S. Hanser, and D. H. Johnson, Conservation Buffer Distance Estimates for Greater Sage-Grouse—A Review, U.S. Geological Survey Open-File Report 2014-1239 (2014), https://doi.org/10.3133/ofr20141239; Naugle et al., "Sage-Grouse and Cumulative Impacts of Energy Development." See also further discussion in section VI below.

[21] See T. E. Remington, P. A. Deibert, S. E. Hanser, D. M. Davis, L. A. Robb, and J. L. Welty, Sagebrush conservation strategy—Challenges to sagebrush conservation, U.S. Geological Survey Open-File Report 2020–1125 (2021), 90. https://doi.org/10.3133/ofr20201125

[22] Remington et al., Sagebrush conservation strategy—Challenges to sagebrush conservation, 79.

rate of spread of invasive plants,[23] so the BLM and other partners should increase their investment in this area.

When addressing sage-grouse habitat conditions, proactive management needs to consider the overstory and the native forbs/bunchgrass understory, this latter is critical to ensuring healthy eggs and chicks. The understory of big sagebrush plant communities warrants greater attention by the BLM, as on-the-ground managers pursue restoration activities. Forbs and grasses provide cover for GRSG at their lekking, nesting, and brood-rearing sites, and these also have a positive relationship with arthropod presence – an important food source for young grouse.[24] In an Oregon study, forbs and invertebrates composed 80% of the dietary mass on the area with higher grouse productivity.[25] As such, percent cover is among the 11 indicators of habitat condition in PHMA and Important Habitat Management Area (IHMA) (as defined by the BLM's land use plans) that BLM examined in its Rangewide Monitoring Report for 2015-2020. Reviewing 2013-2018, percent cover of perennial grasses and forbs on BLM rangelands declined from 24% to 12% within GRSG habitat, which was remarkably higher than outside GRSG habitat (8 to 2%).[26] Furthermore, 70% of PHMA is not meeting criteria for breeding habitat for GRSG. For specific states: In Oregon, 51-74% of the monitoring locations in PHMA early brood-rearing habitat did not meet forb cover goals; in Idaho, 62-80% did not meet cover goals; in Montana, 51%; and in Wyoming, 81%. These low numbers suggest that restoring GRSG-preferred native forbs and native bunchgrasses should be a greater priority in future management actions to ensure the habitats meet the full life history needs of the species.

Another example of a threat to GRSG that is best managed through maintenance of intact landscapes is predation. As the draft EIS notes, "where sagebrush habitats are intact nest success and adult survival rates are high, indicating that predators generally do not limit GRSG populations."[27] In contrast, fragmented habitats "reduce protective cover and often provide subsidies for sustaining abnormally large populations of predators, and the establishment of novel predators."[28] A substantial and growing body of research supports this conclusion.[29] We

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[23] Remington et al., Sagebrush conservation strategy—Challenges to sagebrush conservation, 99.

[24] Victoria E. Pennington, Daniel R. Schlaepfer, Jeffrey L. Beck, John B. Bradford, Kyle A. Palmquist, and William K. Lauenroth, 2016. "Sagebrush, Greater Sage-Grouse, and the Occurrence and Importance of Forbs," *Western North American Naturalist* 76(3) (2016): 298-312.

[25] M. S. Drut, W. H. Pyle, and J. A. Crawford, "Diets and food selection of sage grouse chicks in Oregon," *Journal of Range Management* 47 (1994): 90-93.

[26] V. Herren, E. Kachergis, A. Titolo, K. Mayne, S. Glazer, K. Lambert, B. Newman, and B. Franey, Greater sage-grouse plan implementation: Rangewide monitoring report for 2015–2020 (Denver, CO: U.S. Department of the Interior, Bureau of Land Management, 2021), 22 (at Figure 6). https://eplanning.blm.gov/public_projects/2016719/200502020/20050224/250056407/Greater%20Sage-Grouse%20Five-year%20Monitoring%20Report%202020.pdf

[27] Draft EIS, 2-99 (internal citation omitted).

[28] Draft EIS, 2-99.

[29] P. S. Coates, S. T. O'Neil, B. E. Brussee, M. A. Rica, P. J. Jackson, J. B. Dinkins, K. B. Howe, A. M. Moser, L. J. Foster, and D. J Delehanty, "Broad-scale impacts of an invasive native predator on a sensitive native prey species within the shifting avian community of the North American Great Basin," *Biological Conservation* 243 (2020): 108409; S. M. Harju, C. V. Olson, J. E. Hess, and B. Bedrosian, "Common raven movement and space use: influence of anthropogenic subsidies within greater sage-grouse nesting habitat," *Ecosphere* 9 (2018); C. P. Kirol, K. L. Pilgrim, A. L. Sutphin, and T. L. Maechtle, "Using DNA from hairs left at depredated greater sage-grouse nests to detect mammalian nest predators," *Wildlife Society Bulletin* 42 (2018): 160–65; S. T. O'Neil, P. S. Coates, B. E. Brussee, P. J. Jackson, K. B. Howe, A. M. Moser, L. J. Foster, and D. J. Delehanty, "Broad-scale occurrence

support the approach proposed under all action alternatives (alternatives 3-6), to manage predation of GRSG by avoiding subsidization of predators and enabling of expansion of novel GRSG predators through minimizing predator subsides. Predator subsides include introducing infrastructure in undisturbed habitat, and external food resources from anthropogenic sources. It is also important to monitor predator impacts on GRSG in development areas.[30] The draft EIS suggests that in some cases, it may be necessary to develop predator management plans (i.e. employ lethal control). We do not oppose this approach, but also believe that BLM and other agency resources would be best used, and GRSG populations best served, by a focus on maintaining intact GRSG habitat.

Maintaining intact landscapes represents a simple and cost-effective approach to ameliorating these threats and preserving GRSG populations.[31] Given the greater challenges and expense involved in restoring native sage habitat, protecting the most valuable intact remaining areas is simple common sense. Restoration efforts can then be focused on areas with potential for GRSG habitat expansion, such as SCD growth opportunity areas.

C. Keep GRSG off the lists of threatened and endangered species.

1. The regulatory landscape has changed since 2015.

The BLM's stated purpose for the current planning process is to "address GRSG habitat threats on BLM-administered public lands in context of the 2010 and 2015 USFWS GRSG listing decisions."[32] However, the political and scientific context of GRSG conservation has evolved

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of a subsidized avian predator: Reducing impacts of ravens on sage-grouse and other sensitive prey," *Journal of Applied Ecology* 55 (2018): 2641–52; C. P. Kirol, A. L. Sutphin, L. Bond, M. R. Fuller, and T. L. Maechtle, "Mitigation effectiveness for improving nesting success of greater sage-grouse influenced by energy development," *Wildlife Biology* 21 (2015): 98–109; P. S. Coates, K. B. Howe, M. L. Casazza, and D. J. Delehanty, "Landscape alterations influence differential habitat use of nesting buteos and ravens within sagebrush ecosystem: Implications for transmission line development," *Condor* 116 (2014): 341–56; K. B. Howe, P. S. Coates, and D. J. Delehanty, "Selection of anthropogenic features and vegetation characteristics by nesting Common Ravens in the sagebrush ecosystem," *The Condor* 116 (2014): 35–49; J. B. Dinkins, M. R. Conover, C. P. Kirol, and J. L. Beck, "Greater sage-grouse (*Centrocercus urophasianus*) select nest sites and brood sites away from avian predators," *The Auk* 129 (2012).

[30] See C.A. Hagen, "Predation on greater sage-grouse: facts, process, and effects," *Avian Biology* 38 (2011): 95–100.

[31] See J. W. Connelly, S. T. Knick, M. A. Schroeder, and S. J. Stiver, Conservation assessment of greater sage-grouse and sagebrush habitats (unpublished report) (Cheynne, WY: Western Association of Fish and Wildlife Agencies, 2004); T. B. Cross, M. K. Schwartz, D. E. Naugle, B. C. Fedy, J. R. Row, and S. J. Oyler-McCance, "The genetic network of greater sage-grouse: Range-wide identification of keystone hubs of connectivity," *Ecology and Evolution* 8(11) (2018); 5394-5412; S. J. Oyler-McCance, T. B. Cross, J. R. Row, M. K. Schwartz, D. E. Naugle, J. A. Fike, K. Winiarski, and B. C. Fedy, "New strategies for characterizing genetic structure in wide-ranging, continuously distributed species: A Greater Sage-grouse case study," *PLoS ONE* 17(9) (2022): e0274189, https://doi.org/10.1371/journal.pone.0274189; Shawna J. Zimmerman, Cameron L. Aldridge, Michael S. O'Donnell, David R. Edmunds, Peter S. Coates, Brian G. Prochazka, Jennifer A. Fike, Todd B. Cross, Bradley C. Fedy, and Sara J. Oyler-McCance, "A genetic warning system for a hierarchically structured wildlife monitoring framework," *Ecological Applications* 33(3) (2023): e2787. https://doi.org/10.1002/eap.2787

[32] Draft EIS, 1-4.

since that time. For example, the stated purpose of the BLM's 2019 GRSG management plans[33] was not to conserve GRSG but to "enhance cooperation with the States by modifying the approach to Greater Sage-Grouse management in existing RMPs to better align with individual state plans and/or conservation measures and DOI and BLM policy."[34] However, the resulting plans were enjoined in part because the court found that in achieving those goals, the plans weakened GRSG conservation without providing any justification for doing so.[35] To the extent that the BLM has incorporated many management actions from the 2019 plans into the current planning process, and especially the agency's preferred alternative (alternative 5), the agency risks encountering a similar outcome following potential judicial review of this planning process.

Like the enjoined 2019 plans, the current planning process abandons many aspects of the 2015 GRSG RMPAs, including measures specifically cited by the FWS as justifications for finding that the species did not warrant listing under the ESA, such as sagebrush focal areas (SFAs).

In its 2015 finding, the FWS clearly expected that the process of withdrawing SFAs from mineral location and entry under the Mining Act of 1872 would be completed, concluding that "the long-term protection of the sage-grouse habitat in the SFAs from locatable mineral development will ensure that these important populations are conserved into the future."[36] In 2020, a court order was issued against the Department of the Interior's decision to cancel the withdrawal of SFAs from mineral location and entry, holding that "[t]he record is clear that the FWS did rely on the proposed withdrawal in making its 2015 finding that the listing of the sage grouse as a threatened or endangered species 'is not warranted at this time.'"[37]

The end result of this process is that today, over 8 years after the FWS relied on withdrawal of SFAs from mineral location and entry, the withdrawal process has still not been completed, with the current expectation being that draft National Environmental Policy Act (NEPA) documents for the withdrawal will be available in fall 2024. Despite this, the BLM's draft EIS is virtually silent on the issue of locatable mineral management,[38] apparently assuming that the long-delayed 2015 withdrawal will be completed and thus core GRSG populations will be protected from mining. We do not share this confidence, and we are concerned that if the BLM does not commit to supporting the swift completion of the ongoing withdrawal process or a similar withdrawal, it will undermine this important reason that GRSG have not warranted listing under the ESA.

A similar story has unfolded with compensatory mitigation. In 2015, the BLM embraced compensatory mitigation with a net conservation benefit standard, incorporating it into all of its

[33] Currently enjoined by court order, see Western Watersheds Project v. Schneider, at Memorandum Decision and Order (Dckt. No. 189), No. 1:16-CV-83-BLW (D. Idaho 2019).

[34] E.g. Bureau of Land Management, Oregon Greater Sage-Grouse Proposed Resource Management Plan Amendment and Final Environmental Impact Statement, 2018, at Abstract. https://eplanning.blm.gov/public_projects/lup/103348/163460/199452/2018_Oregon_GRSG_Proposed_RMPA-Final_EIS_508.pdf

[35] Western Watersheds Project v. Schneider, at Memorandum Decision and Order (Dckt. No. 189), No. 1:16-CV-83-BLW.

[36] 12-Month Finding on a Petition To List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species, 80 Fed. Reg. at 59916.

[37] Western Watersheds Project v. Bernhardt, at Memorandum Decision and Order (Dckt. No. 264), No. 1:16-CV-83-BLW (D. Idaho 2021).

[38] With the exception of alternative 3.

GRSG RMPAs. The FWS subsequently cited net conservation benefit mitigation as a reason the species no longer warranted listing.[39] Thereafter, the BLM's 2019 GRSG RMPAs rejected the net conservation benefit standard, incorrectly concluded that the Federal Land Policy and Management Act (FLPMA) does not authorize the BLM to require compensatory mitigation *at all*,[40] and provided that compensatory mitigation programs would be implemented based on state law instead.[41] Now, the BLM and the draft EIS once again embrace compensatory mitigation, but the BLM proposes adopting a standard of no net loss.[42] We recognize that the FWS is now also recommending no net loss for mitigation programs generally, rather than net conservation benefit,[43] but this is another example of a position that the BLM included in its 2015 GRSG RMPAs, that the FWS cited in finding the species did not warrant listing, and that was recognized by a court, that the BLM now proposes to abandon in the current planning process.

2. The BLM should closely coordinate with the FWS to ensure that its final RMPAs and RODs provide adequate regulatory measures to maintain the GRSG's not warranted status.

As a result of changes between the 2015 RMPAs and the GRSG conservation approaches contemplated by the draft EIS, such as those discussed above, the FWS' 2015 not warranted determination can serve only as a limited guide for the BLM is attempting to design conservation measures that will conserve GRSG and keep the species off the lists of threatened and endangered species. This is another reason why a broader management approach focused on intact landscapes makes sense.

However, even as it manages for intact landscapes, the BLM should also be considering the ESA status of the GRSG. To do so will require close coordination with the FWS, as occurred throughout the 2015 planning process. To that end, we urge the BLM to work closely with the FWS as it identifies land allocations and management actions to carry forward to the final EIS and subsequent RMPAs and RODs. The BLM and its partners have made an incredible

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[39] 12-Month Finding on a Petition to List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species, 80 Fed. Reg. 59858.

[40] The full history of the FWS, BLM, and U.S. Forest Service flip-flops on mitigation from the Obama administration to the Trump administration and now the Biden administration is beyond the scope of these comments. The key events were the issuance of a series of Department of the Interior Solicitor's Opinions. See U.S. Department of the Interior Office of the Solicitor, M-37039, The Bureau of Land Management's Authority to Address Impacts of its Land Use Authorizations through Mitigation, December 21, 2016, https://www.doi.gov/sites/default/files/m-37039-the-blms-authority-to-address-impacts-of-its-land-use-authorizations-through-mitigation.pdf; U.S. Department of the Interior Office of the Solicitor, M-37046, Withdrawal of M-37039, "The Bureau of Land Management's Authority to Address Impacts of its Land Use Authorizations Through Mitigation," June 30, 2017, https://www.doi.gov/sites/default/files/uploads/m-37046.pdf; U.S. Department of the Interior Office of the Solicitor, M-37075, Withdrawal of M-37046 and Reinstatement of M-37039, "The Bureau of Land Management's Authority to Address Impacts of its Land Use Authorizations Through Mitigation," April 15, 2022. https://www.doi.gov/sites/default/files/m-37075-compensatory-mitigation-m-op-reinstatement-04.15.22.pdf

[41] E.g. Bureau of Land Management, Oregon Greater Sage-Grouse Proposed Resource Management Plan Amendment and Final Environmental Impact Statement, 2018.

[42] E.g. Draft EIS, 2-22 through 2-25.

[43] U.S. Fish and Wildlife Service, Mitigation Policy (Appendix 1, 501 FW 2), May 2023. https://www.fws.gov/sites/default/files/policy/pdfs/FWS-Mitigation-Policy.pdf

investment of time and resources in GRSG conservation, including this planning process. For the species to nonetheless decline to the point of listing would be a tragic outcome not just for the species but for the agency and for countless people and communities who have contributed to conservation efforts for this species.

D. Set achievable goals.

As discussed above, one of the unfortunate realities of GRSG conservation is that the species has continued to decline since 2015. Clearly, the 2015 management plans have not achieved their goals, and this is one reason the current planning process is necessary. The last several years have seen a number of political and ecological challenges (such as drought and wildfires) beyond the BLM's control, and we can only hope that future GRSG conservation efforts will not be similarly impacted.

However, we are concerned that in at least one respect, the BLM may be setting itself up for failure by committing to management actions that cannot be achieved. Specifically, one of the ways the BLM proposes to achieve greater consistency in compensatory mitigation across the range is by using the habitat assessment framework (HAF) to assess habitat sufficiency in implementing mitigation.[44] Although we recognize the science that went into development of the HAF and endorse use of this tool in theory, completing HAF data sheets in the field is a time- and personnel-intensive activity. Considering BLM field offices' existing workloads, we are not confident that the agency will consistently complete HAF assessments such that they will achieve the BLM's design of having a consistent, reliable, best-science tool for evaluating the effectiveness of compensatory mitigation.

There may be other aspects of the draft EIS that pose similar implementation challenges. We urge BLM leadership to work with not just state and field offices but field staff to design GRSG management actions that the agency will consistently be able to execute across the range for the duration of the current plans. In addition, GRSG conservation activities must be well staffed and robustly funded in order to be effective.

Another important way for the BLM to ensure that its goals for this planning process are achieved is through consultation and close coordination with state governments. State wildlife agencies are the primary managers of GRSG populations, even on BLM-managed lands where the BLM manages GRSG habitat. There are numerous aspects of BLM's management plans that can only be achieved by working with states, including for example implementing compensatory mitigation programs, conducting lek counts and generating population estimates, and identifying and responding to active management triggers. Tribal governments, NGOs, and other stakeholders may have roles to play in some of these actions as well. Regardless, the broader the GRSG conservation movement is and the more unified all GRSG managers and stakeholders are, the more likely that the BLM's goals for GRSG conservation will be achieved.

[44] Draft EIS, 2-22.

E. Apply a consistent management approach.

Application of the 2015 GRSG management plans has not only been incomplete, it has also been inconsistent across state lines. This was recognized in the 2015 planning process but accepted as a political necessity. The 2019 plans, developed for only 7 of the 10 states in the current planning area, were explicitly designed to more closely mirror state law and therefore proposed to make GRSG management even less consistent across the range.[45]

Many aspects of the 2015 GRSG plans relied on state laws and policies or complex procedures that were subject to different implementation across BLM offices. Examples include lek buffer distances, compensatory mitigation approaches, and adaptive management. GRSG do not recognize nor respond differently across state lines. One of the strengths of the draft EIS is that it overwhelmingly applies the same management actions to the same land allocations across the species' range, which will promote consistency and efficiency in managing GRSG. It will also increase transparency, because stakeholders, including members of the public, will be able to look at BLM's approach in one state and be informed regarding what they can expect to see in another state.

The draft EIS continues to recognize some differences in GRSG management across state lines, and we understand that this is necessary. Some state-by-state management issues will be addressed in these comments; others are too specific to discuss in depth. But in all cases, we ask that the BLM strive to avoid a "race to the bottom" situation where certain states are subject to more liberal opportunities for development, potentially leading to governors' reviews during the protest period, as was seen in 2015, and ultimately weakening of GRSG plans, as was seen in 2019. In general, we urge the BLM to adopt state-specific variations for GRSG management only when necessary, only when the altered management approach(s) will provide equal or greater protection to the species, and only after attempting to find other solutions to conflicts and variations across the range. Doing so will best allow this planning process to achieve the goals of consistency, efficiency, and transparency.

F. Create durable management solutions.

We believe that one of the most important goals for this planning process should be to put an end to the politically driven back-and-forth that has characterized the last 8+ years of GRSG conservation. No one is well served by completing plans, litigating them, revising them, litigating them again, returning to earlier management approaches, starting a third planning process, etc. Not the agency, not industry, and not other public lands users and stakeholders such as our organizations and members. And least of all the GRSG itself. The 2015 GRSG plans were expected to be implemented for *at least* 20 to 30 years,[46] but instead they were (initially) implemented for less than 4 years, and some aspects, such as SFA mineral withdrawals, were never implemented.

[45] See draft EIS, Appendix 2 for a detailed summary of all the different management actions for each state in the range under both the 2015 and 2019 plans.

[46] 12-Month Finding on a Petition to List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species, 80 Fed. Reg. at 59892 (emphasis added).

If the BLM creates the most comprehensive and highest-quality GRSG management plans imaginable, but a future administration throws them out and starts over, this process will have been a failure. Alternatively, if the agency allows a race to the bottom characterized by large variations across state lines and many concessions to development, and a court invalidates the plans, this process will have been a failure. Such is the needle that the BLM must thread, and it must do so while ensuring that the GRSG is effectively conserved.

We believe that this is possible.

III. Discussion of alternatives and identification of GRSG habitat management areas (HMAs).

We recommend that the BLM map HMA based on the best available science; exclude discretionary activities including wind, solar, and major ROWs from PHMA; allow criteria-based management in non-habitat within HMA if no indirect or direct impacts to GRSG result; and provide for the strictest management in high-value "best of the best" areas that could be designated as areas of critical environmental concern (ACECs).

A. No single identified alternative will achieve the goals of effective and durable GRSG conservation.

We do not believe that the BLM's preferred alternative, alternative 5, is sufficiently protective of GRSG, and we urge the agency to strengthen it as it completes a final EIS and RMPAs/RODs. Furthermore, we are unable to recommend any other single alternative as the best approach for GRSG management. Fortunately, the BLM is not required to select a specific alternative as it develops RMPAs and RODs. As the draft EIS notes, the agency "may select various goals, objectives, allocations and management prescriptions from each of the alternatives analyzed in the Draft RMPA/EIS."[47] This allows the BLM to "select the best strategy that incorporates appropriate GRSG habitat management actions to meet the RMP goals and objectives, is consistent with the purpose and need, is in accordance with the agency's mandate to manage the public lands for multiple use and sustained yield, and aligns with state and local plans and policies to the extent possible."[48]

As our comments on individual land allocations and management actions will make clear, we support elements from a variety of the proposed alternatives. Because the 2015 plans have become dated and have not been implemented in a way that has been proven to effectively conserve GRSG habitat and populations, and the enjoined 2019 plans would be even less effective, we do not support alternatives 1 and 2. Given recent declines in GRSG populations, there is limited justification for supporting measures that are weaker than those presented in the 2015 plans. However, we recommend that the BLM adopt some or many elements from each of the other alternatives. Most of our comments focus on alternatives 4 and 5, which we believe represent the BLM's most successful efforts to respond to current science and to develop a

[47] Draft EIS, 2-7.
[48] Draft EIS, 2-7.

workable compromise between GRSG protection and other land uses. In addition, we recommend a handful of ideas from alternative 3 relating to prioritization for oil and gas development (see discussion in section VII.B), and the identification of high-value "best of the best areas," which could be designated as ACECs, although such areas should be more targeted than those proposed under alternatives 3 or 6 (see discussion in section III.C).

Below, we highlight some of the broad, range-wide issues in the alternatives that cut across various land allocations. Individual allocations are discussed in more detail later in these comments.

B. BLM should adopt the most recent science-based PHMA and GHMA mapping.

Given the variations across the proposed alternatives, there are a multitude of ways that the BLM could attempt to thread the needle between effective GRSG conservation and the other multiple-use demands on BLM lands. These include striking a balance between using mapping products developed through remote sensing and other technologies to identify areas for allowable allocations and land use practices with limiting impacts of development through project-level restrictions and mitigation requirements. The more consistently and effectively each of these are applied, the less need for the other to fill in the gaps. To that end, we believe that many of the more liberal land allocations and management actions included in proposed alternative 5 would be acceptable if paired with expansive and scientifically-defensible habitat management area (HMA) boundaries, which are most often proposed in alternative 4.

The differences in HMAs between alternatives 4 and 5 are significant. Under alternative 4, 36,701,000 acres would be designated as PHMA and 25,946,000 acres as GHMA. Under alternative 5, 34,803,000 acres would be designated as PHMA (5% fewer) and 23,718,000 acres as GHMA (8.5% fewer).

Furthermore, the differences would not be evenly distributed across the species' range.[49] The majority of the difference in PHMA would be in Wyoming, where the more extensive PHMA proposed in alternative 4 would capture habitat that provides essential connectivity for GRSG populations and reflects the best available science.

Identifying these areas as PHMA will protect delineated, science supported, population connectivity corridors that maintain genetic exchange, including, for example, in northeastern Wyoming between sub-populations east and west of the Powder River and beyond to populations in Montana and the Dakotas. A similar situation can be found in the Red Desert Basin in south-central Wyoming, where the larger area of PHMA under alternative 4 would provide better connectivity for GRSG populations on either side of I-80.[50] Utah is another state where there would be significantly fewer acres of PHMA under alternative 5 compared to alternative 4.

[49] See Draft EIS at Map 2.4 and Map 2.5.

[50] See T. B. Cross, J. D. Tack, D. E. Naugle, M. K. Schwartz, K. E. Doherty, S. J. Oyler-McCance, R. D. Pritchert, and B. C. Fedy, "The ties that bind the sagebrush biome: integrating genetic connectivity into range-wide conservation of Greater Sage-Grouse," *Royal Society Open Science* 10 (2023): 1–15.

Another issue is that HMA boundaries under alternative 5 in Nevada are the result of clipping the USGS Coates model to state population management units (PMUs). Areas outside of the PMUs have not been occupied for "decades" but may still be viable habitat. The approach of clipping to PMUs is similar to that of clipping to known occupied area in several other states, resulting in many isolated HMAs under alternative 5. HMAs defined in alternative 4 are the most likely to meet the conservation elements of the purpose and need and represent the full extent of modeled habitat from USGS. Clipping to PMUs would inappropriately confine the species to these borders, making it less likely for individual populations to survive, especially when inevitable disturbances arise.

Overall, we urge the BLM to adopt the mapping of PHMA and GHMA that reflects the best available science and is best for protecting and sustaining GRSG habitat and populations, consistent with the purposes of this planning process. Across most of the range, this means adopting the PHMA and GHMA mapping proposed in alternative 4, but we recognize that there may be some areas where additional information, including state input and the best available science, suggest that alternative 5 proposes stronger HMA mapping.

C. The BLM should designate a small number of high-value areas as ACECs.

In the preceding discussion of HMA mapping, we emphasized the efficiencies that could be gained if essential GRSG core and connectivity habitat is identified as PHMA and managed with stronger protections for GRSG from competing land allocations. This approach would ensure that more important areas for GRSG conservation receive more extensive protections, without unduly hampering the BLM's multiple-use obligations.

The same logic extends to the "best of the best" GRSG habitat, constituting a small number of uniquely irreplaceable areas characterized by high levels of GRSG connectivity, genetic exchange, population density, and intact sagebrush. These areas should be provided with even higher levels of protection, as the BLM proposes to do with ACECs identified under alternative 6. While we support the BLM's management approach to these areas, which equal or exceed the strongest approach to PHMA under alternative 4, the 11,139,472 acres being considered under alternative 6 are too expansive.

Instead, we recommend that a small number of these "best of the best" areas be considered for designation as ACECs based on local input and support, backed by peer-reviewed scientific literature that takes into account landscape intactness, range-wide population modeling, sage-grouse genetic flow/population connectivity, development potential, and spatially explicit models such as the SCD.[51] Among these areas are the Golden Triangle/Little Sandy (WY),[52]

[51] N. B. Carr, I. I. F. Leinwand, and D. J. A. Wood, A Multiscale Index of Landscape Intactness for the Western United States, U.S. Geological Survey data release, 2016, https://dx.doi.org/10.5066/F75H7DCW; Doherty et al., A Sagebrush Conservation Design to Proactively Restore America's Sagebrush Biome, Open-File Report 2022–1081.

[52] See Nomination for the Proposed Little Sandy Area of Critical Environmental Concern, submitted electronically to Bureau of Land Management Rock Springs Field Office Manager Kimberlee Foster, December 19, 2022. Available at https://rockies.audubon.org/sites/default/files/little_sandy_acec_nomination_2023.pdf

portions of the Owyhee-Jarbidge (NV/ID border) and High Divide (ID/MT border) areas, and South Valley Phillips/Hi-Line (MT).

To protect the relevant and important values of these highly-targeted areas, special management prescriptions are needed, which could include the following:

- Designate as ROW exclusion areas, including prohibiting renewable energy generation sites and transmission lines;
- Recommend withdrawal from mineral entry;
- Close to leasing or allow leasing only with no surface occupancy with no exceptions, waivers, or modifications;
- When the primary term for existing leases end, allow the leases to expire;
- When reviewing new applications for permits to drill (or APD extensions), condition approval contingent upon both lease terms and ACEC management direction;
- Close to construction of new roads;
- Designate as seasonally closed to motor vehicle use, limited to motor vehicle use on designated routes, or limited to mechanized use on designated routes;
- Close to mineral material sales;
- Designate as Visual Resource Management Class I or II;
- Restrict construction of new structures and facilities unrelated to the preservation of GRSG and not necessary for the management of uses allowed under the land use plan; and
- Retain public lands in federal ownership.

Adopting the three-tiered approach of GHMA, PHMA, and "best of the best" will best ensure the BLM meaningfully protects the most important areas for GRSG conservation while allowing other important uses of BLM-managed lands in less sensitive areas, and so meet the agency's multiple-use obligations.

D. The final EIS should provide a scientifically-sound method for identifying non-habitat within HMAs and authorizing appropriate development.

We support the BLM's recognition that identified GRSG HMAs will inevitably include some areas that do not provide GRSG habitat and where development could be located without any adverse impacts to GRSG populations or prospects for population growth. We urge the BLM to engage in frequent and meaningful consultation with states, including concurrence of state wildlife agencies, in order to identify such areas.

Mapping errors may be present in initial data, for example, because of insufficient ground-truthing. Mapping inconsistencies may also arise over time, as conditions on the ground change due to both natural conditions and also federal, state, and local management actions. According to the agency's Land Use Planning Handbook, the BLM has the authority to update its land management plans without preparing a formal RMPA for maintenance actions including "correcting minor, typographical, mapping, or tabular data errors."[53] If these RMPAs are to

[53] Bureau of Land Management, Land Use Planning Handbook, H-1601-1, at VI.H, Determining When to Update Land Use Plan Decisions Through Maintenance Actions. Available at

effectively govern GRSG conservation over a period of years or decades, such corrections will be necessary. In the absence of these corrections, or in periods between them, the draft EIS proposes a sensible and conservative approach to allowing development in non-habitat erroneously mapped as habitat.

We urge the BLM to use caution in authorizing development within non-habitat areas, because doing so may have indirect or cumulative effects on adjacent GRSG habitat and may preclude restoration of non-habitat areas to provide habitat value to GRSG populations. We broadly support the management approach proposed in both alternatives 4 and 5, requiring non-habitat exemptions be granted only on a project-by-project basis, after coordination with state and federal agencies, including with trained biologists, and with limitations on access to prevent new indirect impacts to GRSG habitat.[54]

In order to ensure consistency at the state level and across the range, we recommend that any projects in non-habitat be authorized by the BLM State Director, with concurrence from the state wildlife management agency. Furthermore, adopting the more expansive and scientifically-supported designation of HMA under alternative 4, as we recommend, would expand the decision space and flexibility for site-specific management of non-habitat areas within HMAs. In all cases, siting based on non-habitat areas within HMAs should not lead to further landscape fragmentation, anthropogenic subsidies for predators, or restrict GRSG seasonal movement and genetic connectivity.

IV. The BLM must apply the full mitigation hierarchy to all land use activities impacting GRSG, use compensatory mitigation sparingly, fully compensate for all impacts, and achieve a minimum standard of no net loss.

Effective mitigation is a widely accepted regulatory tool and was a critical part of the 2015 decision not to list the GRSG under the ESA. The 2015 RMPAs rely on the mitigation hierarchy to help reach their goal of protecting sage-grouse while also allowing multiple uses to proceed by ensuring associated impacts to habitat are fully offset. The FWS not-warranted finding explicitly recognized the importance of mitigation:

> All of the Federal Plans require that impacts to sage-grouse habitats are mitigated and that compensatory mitigation provides a net conservation gain to the species. All mitigation will be achieved by avoiding, minimizing, and compensating for impacts following the regulations from the White House Council on Environmental Quality (e.g., avoid, minimize, and compensate), hereafter referred to as the mitigation hierarchy. If impacts from

https://www.ntc.blm.gov/krc/system/files?file=legacy/uploads/5656/4_BLM%20Planning%20Handbook%20H-1601-1.pdf (See also 43 CFR § 1610.5-4)

[54] Draft EIS, 2-19 through 2-21.

> BLM/USFS management actions and authorized third party actions that result in habitat loss and degradation remain after applying avoidance and minimization measures (i.e., residual impacts), then compensatory mitigation projects will be used to provide a net conservation gain to the species.[55]

The FWS then concluded, "[r]equiring mitigation for residual impacts provides additional certainty that, while impacts will continue at reduced levels on Federal lands, those impacts will be offset."[56] The 2015 BLM sage-grouse plans thus not only employ the mitigation hierarchy as a regulatory and conservation tool to preclude listing, but the FWS not warranted decision was, in part, based on the promise of the protections and conservation measures that mitigation would deliver.

Mitigation is based on two common-sense principles: (1) it is more appropriate to locate certain activities in some locations than others; and (2) we should clean up after ourselves as we conduct activities that damage the landscape. Properly designed and implemented mitigation involves smart planning, efficient and effective decision-making, and predictability for project proponents, and fully considers the needs of the proposed project, land management priorities, and stakeholder interests. Applied in a balanced manner, mitigation can result in positive outcomes for all – the public, communities, businesses, and the environment. Sound mitigation policy provides agencies such as the BLM with a structured, rational, and transparent framework for reviewing use requests and meeting multiple-use and sustained-yield mandates.

Good mitigation policy and practice is also one of the best opportunities to meet both sustainable development and conservation goals.[57] Many projects, even those with relatively small footprints, can pose significant impacts to wildlife. When fairly designed and implemented and evaluated at appropriate scales, mitigation policies can reduce conflict between conservation and land use activities and support private land stewardship. Such approaches are essential for effective GRSG conservation, and as this planning process continues, we urge the BLM to incorporate strong criteria for mitigation in the final EIS and RMPAs/RODs.

A. The BLM must avoid, minimize, and mitigate impacts to GRSG, in that order.

It is well-established that mitigation is a multi-step process that follows a hierarchy where damage to public lands and resources must first be avoided, second minimized, and third

[55] 12-Month Finding on a Petition to List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species, 80 Fed. Reg. at 59881 (citation omitted).
[56] 12-Month Finding on a Petition to List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species, 80 Fed. Reg. at 59881.
[57] See generally Justin R. Pidot, Compensatory Mitigation and Public Lands, 61 Boston College Law Rev. 1045, 1058-59 (2020).

compensated for (compensatory mitigation).[58] This approach is reflected in BLM policies and manuals, including IM 2021-046, Manual Section MS-1794, and Handbook H-1790-1.[59]

The mitigation hierarchy is a stepwise framework for evaluating proposed impacts that first considers options for avoiding impacts from development on the most important habitat in the first place. Some places are too sensitive, rare, or irreplaceable for development and should be avoided entirely. Consider, for example, GRSG wintering areas. Several recent studies have confirmed the importance of ensuring conservation of a sufficient amount of these habitats.[60] In other instances, measures to minimize and/or compensate for impacts may not be available or effective, making avoidance the necessary choice.

The second step in the mitigation hierarchy is to minimize impacts, lessening the scope and severity of disturbance of wildlife and habitat in the project area. If unavoidable impacts occur, the third and final step is to compensate for the loss by creating, restoring, enhancing, or preserving habitat elsewhere. This might involve supporting new conservation management actions on nearby land or restoring nearby habitat with treatments designed to improve conditions for affected species. Compensatory mitigation projects should be consistent with the best practices outlined in subsection IV.C of these comments.

Following each step of the mitigation hierarchy in sequence provides a predictable framework that results in a consistent approach to all types of land allocations and individual projects. Mitigation allows agencies to frontload their planning and provide the public and applicants with information in advance about where development should and should not go, resulting in faster, better decisions. Potential conflicts between conservation and development are reduced when developers know in advance what areas should be avoided. Applying the mitigation framework to sensitive species also helps ensure that decisions made today aren't precluding future use activities or transferring species management challenges from one unit of government to another.

B. Compensatory mitigation must, at minimum, meet a standard of "no net loss" and must fully account for all cumulative impacts.

[58] The mitigation hierarchy is widely discussed in both regulatory and academic publications. See, for example, CEQ regulations implementing NEPA, at 40 CFR § 1508.1(s).

[59] See Bureau of Land Management, Instruction Memorandum 2021-046: Reinstating the Bureau of Land Management (BLM) Manual Section (MS-1794) and Handbook (H-1794-1) on Mitigation, accessed March 15, 2024, available at https://www.blm.gov/policy/im-2021-046 ("Follow the mitigation hierarchy by first avoiding damage to the public lands and resources; second, minimizing damage that cannot be avoided; and third, compensating for any residual impacts to important, scarce, or sensitive resources or resources protected by law.").

[60] See e.g., Jonathan B. Dinkins, Kirstie J. Lawson, Kurt T. Smith, Jeffrey L. Beck, Christopher P. Kirol, Aaron C. Pratt, Michael R. Conover, and Frank C. Blomquist, "Quantifying overlap and fitness consequences of migration strategy with seasonal habitat use and a conservation policy," *Ecosphere*, v. 8, no. 11, article e01991 (2017), https://doi.org/10.1002/ecs2.1991; Kurt T. Smith, Jeffrey L. Beck, and Aaron C. Pratt, "Does Wyoming's core area policy protect winter habitats for greater sage-grouse?", *Environmental Management*, v. 58, no. 4 (2016): 585-96.

Throughout the draft EIS, the BLM has adopted a standard of no net loss for compensatory mitigation. This is consistent with the FWS' revised Mitigation Policy, issued in 2023.[61] According to the draft EIS, this means "full restoration of functional habitats or enhancement of habitats to minimally support the number of GRSG present prior to disturbance at the apex of the population cycle."[62]

We recognize that no net loss has emerged as the most widely-accepted approach to compensatory mitigation for GRSG and other species, following the abrupt shift from the 2015 GRSG RMPAs that embraced net conservation benefit to the 2019 RMPAs that disclaimed any authority over compensatory mitigation under FLPMA.[63] However, given the ongoing decline of GRSG populations, the urgent need to not only stabilize but increase the species' numbers, and the documented reality that successful restoration efforts in sagebrush habitat are risky and can take several decades to complete, we believe that compensation programs and activities designed to do more than ensure no net loss will be essential to successful conservation of the species. It is critical that the BLM have a high degree of confidence that direct, indirect, and cumulative impacts of infrastructure development and resource extraction will be offset with high quality, durable, timely, and additional compensatory mitigation projects. Without effective mitigation to at least a no net loss standard, sage-grouse habitat will be lost by the proverbial "death by a thousand cuts" from development and other types of conversion.

One way to ensure that cumulative impacts are fully offset by compensatory mitigation is to implement mitigation before impacts are permitted, as opposed to afterwards. This avoids the risk of mitigation measures proving ephemeral, underfunded, or ineffective. Effective monitoring programs can then sustain this assurance over time. Mechanisms that can provide advance mitigation of impacts include conservation banks, habitat exchanges, and regional mitigation plans.[64]

We recognize, however, that there are significant practical obstacles to consistently achieving this desired outcome. We support the approach taken by the draft EIS in applying compensatory mitigation, where the draft EIS recognizes that compensatory mitigation should account for the level of risk that a compensatory mitigation action may fail or not persist for the full duration of the impact compensated.[65] We urge the BLM to apply this logic to compensatory mitigation of all types.

Another reason compensatory mitigation must be carefully designed and achieve high standards is the highly sensitive nature of many sagebrush habitats. Sagebrush and associated vegetative communities in arid western landscapes tend to be slow growing, and therefore creating or

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[61] U.S. Fish and Wildlife Service Mitigation Policy and Endangered Species Act Compensatory Mitigation Policy, 88 Fed. Reg. 31000 (May 15, 2023); U.S. Fish and Wildlife Service, Mitigation Policy (Appendix 1, 501 FW 2), 3.

[62] Draft EIS, 2-23.

[63] See discussion in section II.C.1, above.

[64] Habitat exchanges, in particular, are an innovative tool that is still maturing. See, e.g., Kristiana Hansen, Sara Brodnax, Roger Coupal, Jennifer Lamb, Anne MacKinnon, Ginger Paige, Eric Peterson, and Melanie Purcell, "Wyoming Conservation Exchange: A Case Study in Grassroots Conservation Program Design," *Journal of Extension* 61(4) (2024). https://tigerprints.clemson.edu/joe/vol61/iss4/2/

[65] See, e.g., draft EIS, 2-35.

restoring ecologically functioning land is a time-consuming and difficult process. For example, the impact of fire on sagebrush has been extensively studied, and "most sagebrush taxa are slow to recover after fire because of limited seed dispersal, inability to resprout, and poor seed viability" and "sagebrush recovery to near pre-burn cover after fire can take anywhere from a few decades to more than a century depending on geography, seasonal precipitation, and soil types."[66] Moreover, some of the most important GRSG habitat such as mature and intact sagebrush stands that provide for nesting may never be recreated through restoration efforts.

Given the urgent need to restore GRSG populations, and our limited control over impacts such as wildfire, it makes little sense to intentionally create new demand for habitat restoration by allowing development impacts that must be compensated for by a development entity. Instead, we should focus on avoiding and minimizing any impacts from discretionary anthropogenic activities, especially in the best remaining GRSG habitat.

C. Compensatory mitigation must follow recognized best practices to be effective.

To achieve effective compensatory mitigation with a minimum standard of no net loss, we urge the BLM to ensure that numerous well-established best practices for compensatory mitigation are incorporated into the final EIS and any subsequent mitigation programs designed to conserve GRSG.

Important features of compensatory mitigation have already been recognized by the BLM, and can be found in the agency's Mitigation Manual (1794-M) and Mitigation Handbook (H-1794-1). Another useful source is a 2015 report published by The Nature Conservancy, *Achieving Conservation and Development: Applying the Mitigation Hierarchy*.[67] We urge the BLM to carefully and thoroughly apply all of these principles to GRSG management, including:

1. Loss/gain methodology.

Mitigation programs should quantify impacts and offsets through loss/gain methodologies, ideally based on a measure of the capacity of areas lost and offset. There are large variations in the quality of habitat for sage-grouse, and it is important to address the variation in habitat quality by including measures of habitat functionality and using adjustment factors to account for the risk of project failure. These measures need not be overly precise, but rather should strive to

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[66] Michele R. Crist, Rick Belger, Kirk W. Davies, Dawn M. Davis, James R. Meldrum, Douglas J. Shinneman, Thomas E. Remington, Justin Welty, and Kenneth E. Mayer, "Trends, Impacts, and Cost of Catastrophic and Frequent Wildfires in the Sagebrush Biome," *Rangeland Ecology & Management*, vol. 89 (2023): 3-14, 6. https://doi.org/10.1016/j.rama.2023.03.003 See also C. L. Roth, S. T. O'Neil, P. S. Coates, M. A. Ricca, D. A. Pyke, C. L. Aldridge, and D. J. Delehanty, "Targeting sagebrush (Artemisia Spp.) restoration following wildfire with greater sage-grouse (*Centrocercus urophasianus*) nest selection and survival models," *Environmental Management*, 70(2) (2022): 288-306; and the U.S. Geological Survey's three-part handbook on sagebrush restoration. Available at https://www.usgs.gov/news/technical-announcement/handbook-sagebrush-steppe-restoration-techniques-can-help-sustain

[67] B. McKenney and J. Wilkinson, *Achieving Conservation and Development: 10 Principles for Applying the Mitigation Hierarchy* (The Nature Conservancy, 2015). Available at https://www.conservationgateway.org/Documents/TNCApplyingTheMitigationHierarchy.pdf

yield a roughly equivalent amount and type of replacement resources. Risk, uncertainty, and time lag can be addressed through the inclusion of appropriate adjustment factors.

2. Site selection, service areas, scale-appropriate decision making, appropriate actions, and habitat types.

Mitigation programs should provide guidance on appropriate criteria for selecting offset sites, including distance from impact site, boundaries within which impacts may be offset, and any requirements for identifying offset areas based on relevant scale-appropriate conservation information. Specific actions that may be used to provide offsets (e.g., restoration, preservation, enhancement, creation) and types of habitat that are appropriate (e.g., equivalent habitat types) should also be described. Properly applied, these criteria will ensure that there is a reasonable relationship between the impacts authorized and the compensation intended to offset them.

3. Performance standards.

Mitigation programs should have in place performance standards that are clear, science-based, measurable, and designed to track compliance, effectiveness, and inform any needed adjustments for improvement. They should also clearly specify the conservation outcomes (impacts minimized, functional units of offsets delivered) that are expected. Minimization and offset actions should be required to meet ecological performance standards and adhere to provisions for monitoring, adaptive management, and enforcement measures to ensure long-term and sustainable outcomes for conservation.

4. Timeliness.

Recognizing that it may not be possible to implement mitigation activities before authorizing impacts, compensatory mitigation should nonetheless strive to minimize the lag between the time unavoidable impacts occur and the time offsetting mitigation benefits are provided. Mitigation benefits occur not when mitigation commitments are made, but when effective mitigation actions have been successfully completed. Some mitigation actions, such as vegetation management, may be subject to seasonal limitations and/or take many years to prove their impact, so some flexibility is required.

5. Duration.

Compensatory mitigation measures should be designed to be in place at least as long as the duration of the direct and indirect impacts they offset. This requires accurately identifying the duration of impacts. Some impacts may only last for a limited time, while others may be permanent. The end of a specific activity causing an impact does not necessarily mark the end of the impact – the impact ends only when the affected habitat has regained its value for GRSG.

GRSG life cycles and behaviors must also be considered. Because GRSG populations are cyclical in nature, it is important to evaluate long-term trends and not to assume that an increase in population reflects a permanent gain – as we are seeing right now on the upswing from the latest 2021 population low point. Additionally, GRSG exhibit high fidelity to established habitat,

including leks and other seasonal habitats, and individual GRSG often will not abandon an impacted area. Avoidance behavior is not immediate, but occurs as yearlings subsequently abandon the impacted area.[68] Similarly, after an impact ends and habitat is restored, it is future generations, not the current generation, that will recolonize it. Accordingly, it can take years for impacts both to appear at the population level and to end after restoration.

6. Durability.

Compensatory mitigation measures must be durable to be effective. This means that they must be maintained and be effective for the entire duration of the impact and additional reclamation time. Durability of offsets may be realized through administrative tools such as land use planning, protective leases for public purposes, or restoration and mitigation leases such as those recognized by the BLM in the new Public Lands Rule.

7. Additionality.

One of the essential requirements for compensatory mitigation is that it must provide conservation benefits above what would have occurred in the absence of compensatory mitigation measures. This can take the form of new resource benefits such as GRSG habitat, or a reduction in risks or threats to GRSG due to mitigation actions.

Detailed analysis of additionality considerations for every type of compensatory mitigation are beyond the scope of these comments. One issue common to all mitigation programs, however, is the concept that any action required by a federal or state law, or participation in a government benefits program, cannot provide additionality. This is especially an issue on public lands, where the BLM's actions are already subject to significant conservation obligations under FLPMA and the agency's regulations and policies.

On public lands, any activities that are required of a permit holder (such as restoration or reclamation after mineral development, or maintenance of rangeland health) would not provide additionality. Only conservation actions that exceed existing permit, lease, or other land use authorizations or regulatory obligations provide additionality. For GRSG, in some areas there is so little GRSG habitat on private lands (for example in Nevada), it may be necessary to provide mitigation on public lands. The BLM's Public Lands Rule clearly contemplates the potential for enhancement and restoration efforts on BLM-managed lands to offset habitat loss through the use of mitigation leasing. We encourage the BLM to develop compensatory mitigation projects on BLM lands when they would have the most benefit to GRSG.

8. Monitoring and adaptive management.

We applaud the BLM for its approach to adaptive management in the draft EIS, which is considerably improved from the 2015 RPMAs.[69] Adaptive management is also an important

[68] M. J. Holloran, R. C. Kaiser, and W. A. Hubert, "Yearling Greater Sage-Grouse Response to Energy Development in Wyoming," *Journal of Wildlife Management* 74 (2010): 65–72. http://www.bioone.org/doi/abs/10.2193/2008-291

[69] See discussion in section V below.

aspect of mitigation actions, as conditions on the ground will inevitably change over the years and even decades that they are active. Compensatory mitigation programs, like other aspects of GRSG management, should be monitored to determine if they are meeting intended outcomes; if they are not, why; and how they can be changed to meet their objectives.

One potential challenge for the approach taken in the draft EIS is the suggestion that the HAF approach can be used to measure habitat sufficiency in implementing mitigation.[70] Given the field time required to implement the HAF methodology, the BLM should consider alternative approaches, including remote sensing, to verify the effectiveness of compensatory mitigation actions, and supplement these with the HAF where available.

D. The BLM may rely on state mitigation programs to achieve compensatory mitigation requirements for GRSG, provided those programs meet standards outlined in BLM policy.

Following adoption of the 2015 RMPAs, it became apparent that, because some states had already completed or had begun efforts to develop compensatory mitigation strategies to implement conservation measures for the species, it would be redundant to develop federal mitigation strategies for each GRSG management zone. Subsequently, state mitigation programs became the preferred way to manage GRSG mitigation across the range.

States have adopted a variety of approaches to GRSG mitigation, and we support continued flexibility for states to design and apply different geographically-appropriate mitigation approaches. Variability from state-to-state allows for experimentation and, eventually, the ability to compare the effectiveness of different approaches across states.

A voluntary approach to mitigation, employed by states such as Utah, is not acceptable, however, since it provides no certainty that any new habitat will be created in response to development of existing habitat. In addition, application of strict avoidance and minimization principles in these programs is critical because we cannot begin to reduce impacts to sagebrush habitat if development continues to occur on the best habitat.

In contrast, Nevada's Conservation Credit System represents a state mitigation program that requires participation. It also uses the mitigation hierarchy, quantifies impacts and mitigation (debits and credits), applies mitigation at a variety of appropriate scales, applies a net conservation gain standard, and is implemented and overseen by a technical team that applies the best science.[71]

Because the BLM does, in fact, have the authority under FLPMA to require compensatory mitigation,[72] we support the approach taken in alternatives 4 and 5, under which the BLM itself

[70] Draft EIS, 2-22.

[71] See State of Nevada Sagebrush Ecosystem Program, Nevada Conservation Credit System, accessed April 30, 2024, https://sagebrusheco.nv.gov/CCS/ConservationCreditSystem/

[72] See U.S. Department of the Interior Office of the Solicitor, M-37075, Withdrawal of M-37046 and Reinstatement of M-37039, "The Bureau of Land Management's Authority to Address Impacts of its Land Use Authorizations Through Mitigation."

will require mitigation to a no net loss standard if the relevant state either does not require mitigation, or the state's mitigation program is determined by the BLM to be inconsistent with BLM/DOI policy.[73] We further support the approach in alternative 4, under which the BLM would consider requiring mitigation *above* state requirements in areas where adaptive management triggers have been met.[74]

E. Compensatory mitigation may not be appropriate for certain impacts.

As discussed previously in these comments, compensatory mitigation is not a cure-all, or a tool that can be used to authorize unlimited impacts to GRSG habitat. The BLM must apply the full mitigation hierarchy and best practices to ensure effective compensatory mitigation that captures indirect and cumulative impacts over time.

Even using such a properly-designed approach to compensatory mitigation, there are some impacts and locations where the BLM should not allow compensatory mitigation, instead requiring impacts, including indirect and cumulative impacts, to be completely eliminated through avoidance and minimization.

One such situation is the application of waivers, exemptions, and modifications (WEMs) for oil and gas development in GRSG PHMA.[75] Under both alternatives 4 and 5, the draft EIS would authorize WEMs for oil and gas development within PHMA, both inside and outside of 0.6 miles from active leks. Alternatives 4 and 5 would both require compensatory mitigation for impacts deriving from these WEMs to provide appropriate offsets, durability, and risk management. Alternative 4 would further require advance implementation of compensatory mitigation and recognizes that compensatory mitigation may not be appropriate in some GRSG populations and habitat.

We urge the BLM to adopt a stronger approach, and not allow the use of compensatory mitigation to authorize WEMs in NSO areas, including within all PHMA outside of Wyoming and within lek buffers subject to NSO stipulations in Wyoming. As already noted, compensatory mitigation must meet very high standards to be effective, and its use invariably introduces some level of risk to protected resources such as GRSG. In the case of oil and gas development, there is simply no need to introduce this risk. The reason for NSO stipulations on most PHMA and Wyoming lek buffers is that they represent the core areas most essential to GRSG reproduction, population sustainment over time, and ultimately recovery of the species' population. NSO stipulations are a linchpin for any GRSG conservation strategy that focuses on core areas. Compensatory mitigation should not be used to authorize otherwise-prohibited development in NSO areas.[76]

[73] Draft EIS, 2-24 through 2-25.
[74] Draft EIS, 2-24 through 2-25.
[75] See draft EIS, 2-47 through 2-72.
[76] We note that the draft EIS analyzed the impacts of managing GRSG habitat without any WEMs at all, which places this recommendation within the range of alternatives analyzed.

V. The adaptive management program proposed by the draft EIS is a significant improvement over the 2015 approach and an essential component of a functional GRSG conservation plan.

Because conditions change over time, adaptive management is an important aspect of GRSG conservation. A properly-designed and -implemented adaptive management program will help make the BLM's GRSG management both durable and effective. Adaptive management was an important part of the 2015 GRSG RMPAs, and was cited extensively by the FWS in its decision not to list the species under the ESA.[77] We are pleased that the BLM continues to see adaptive management as an important foundation of the current planning process, and we believe that the draft EIS improves on the 2015 RMPAs in several ways.

In practice, the 2015 approach to adaptive management has proven to be flawed in at least three ways. First, adaptive management strategies vary widely across the states in the range, leading to inconsistent methodologies and outcomes, making it challenging to ensure effectiveness and to develop best practices or lessons learned to improve adaptive management over time. Second, state agencies and state BLM offices have been inconsistent in their responses to triggers, and generally slow to come to an agreement regarding causal factors and slow to implement management responses (if any). Third, while adaptive management plans included both habitat and population triggers, the majority of triggers included and met were population triggers.[78] This exacerbated the first two issues. Because GRSG populations are cyclical and can fluctuate over a fairly wide range, it proved difficult to come to definite conclusions that population-based triggers had in fact been reached, had been reached due to covered management actions, and would be successfully addressed through proposed management changes. This uncertainty enabled inaction in implementing adaptive management, and likely contributed to GRSG population declines. In contrast, the adaptive management program proposed by the draft EIS addresses all of these issues, and we urge the BLM to retain and ultimately implement it as this planning process continues.

A. The proposed adaptive management program achieves consistency across the range.

The first strength of the proposed adaptive management program is its consistency. We support the draft EIS's approach of applying the same adaptive management framework across the

[77] 12-Month Finding on a Petition to List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species, 80 Fed. Reg. 59858.

[78] See, e.g. Bureau of Land Management, Record of Decision and Approved Resource Management Plan Amendments for the Great Basin Region, Including the Greater Sage-Grouse Sub-Regions of Idaho and Southwestern Montana Nevada and Northeastern California Oregon Utah, Appendix D, Adaptive Management Strategy, 2015. https://eplanning.blm.gov/public_projects/lup/103348/143737/176977/ORGRSG_AppendixD-Adaptive_Mngmnt_508.pdf; Bureau of Land Management Casper, Kemmerer, Newcastle, Pinedale, Rawlins, and Rock Springs Field Offices Approved Resource Management Plan Amendment for Greater Sage-Grouse (Wyoming), 2015, 37-38. https://eplanning.blm.gov/public_projects/lup/103347/143767/177179/002_Wyoming_ARMPA_Main-Body.pdf

GRSG's range, without any variation across states, including both the specific triggers for adaptive management and the methodology and timeframe for actions to be taken in response.

We also note that the BLM's approach is virtually the same across alternatives 3, 4, and 5. The only difference among them is that under alternative 5, new authorizations could be considered during the rapid assessment period for a trigger, subject to project-level NEPA.[79] While it might be preferable in certain cases to foreclose this option, project-level NEPA that is rigorous and considers the ongoing adaptive management process could help to address any issues of concern.

In addition to consistency across the range, the draft EIS also provides a 60-day deadline for completion of rapid assessments, followed by 6 months for a more in-depth causal factor analysis (CFA), if necessary. This will help ensure that adaptative management is conducted in a timely manner, unlike under the 2015 RMPAs. We support the BLM's decision to adopt a more generous deadline for CFAs as they are highly trigger- and location-specific, and are only needed when rapid assessments are unable to identify the cause for a trigger being reached. We expect that in many cases, habitat triggers will result in conclusive rapid assessments, and allow adaptive management to be completed expeditiously.

B. The broad application of habitat-based adaptive management triggers will make adaptive management more effective.

We appreciate the fact that the draft EIS includes numerous adaptive management triggers based on habitat conditions, including a soft trigger when a neighborhood cluster loses more than 5% of its area capable of supporting sagebrush in a given year (including due to wildfire), a hard trigger when a neighborhood cluster drops below 65% of the area capable of supporting sagebrush, and a hard trigger when the 5% loss soft habitat trigger is met in 4 consecutive years.[80]

Because it is easier to identify specific causes for habitat loss compared to population loss, for example due to development impacts or wildfire, we expect that these habitat triggers will prove at least as effective as the population triggers included in the 2015 plans.

We support the use of the best science in identifying habitat triggers. All adaptive management analyses should be transparent and repeatable, allowing verification by state wildlife agencies and the scientific community and the identification of best practices. To achieve this, we support the draft EIS's use of geospatial and remote-sensed data to assess sagebrush habitat, with additional analysis using the HAF considered when available.[81]

[79] Draft EIS, 2-123.
[80] Draft EIS, 2-122.
[81] See discussion in section II.D about the challenges of using the HAF.

C. The Targeted Annual Warning System (TAWS) provides a scientifically-sound method for identifying population-based adaptive management triggers.

Generally, we support the draft EIS' approach to population trend triggers. As the draft EIS states, "[t]he BLM must consider all available information regarding population threshold status." First and foremost, this includes state wildlife agency lek counts, state population trend analyses, and other state data, because state wildlife agencies have primary authority over fish and wildlife resources within their states and are responsible for managing GRSG populations.

While we support the BLM's decision to use the TAWS model as a means of identifying adaptive management triggers, we urge that it do so as a backstop, continuing to rely on and work with state wildlife agencies to collect, share, and analyze population data. The 2015 approach to population triggers varied by state and has been inconsistently applied. TAWS is the leading, USGS-developed, scientific tool available for identifying triggers. It provides a consistent methodology that automatically analyzes lek data from across the range, providing repeatable and verifiable results. That said, it is not perfect. It is a complex modeling tool that is inevitably subject to some errors.

For these reasons, we urge the BLM to use TAWS as one means of monitoring population fluctuations and to identify potential triggers. TAWS can serve as a consistent model across states, while still encouraging state wildlife agencies to collect and share population data and conduct their own, parallel analyses of potential changes and triggers. The BLM should also use and rely on data collected and analyses prepared by state wildlife agencies both as a means of identifying triggers and to determine responses.

Rather than give the state the opportunity to rebut a TAWS finding, we recommend the BLM make a commitment to work with state wildlife agencies to ground-truth any TAWS finding collaboratively. TAWS should act as a safety net, using its sensitive modeling capabilities to catch potential triggers that can then be verified by the BLM, state wildlife agencies, and others. This process will help ensure that no management changes are made due to TAWS errors.

The BLM has the ultimate obligation to determine when an adaptive management trigger has been met and how it will be addressed, and to take action in a timely manner. The collaborative process outlined here should facilitate that action in a way that reflects the best available science and is consistent with the purpose of this planning process.

VI. The BLM should follow well-established science when establishing lek buffers.

Lek buffers are an important tool to protect active GRSG leks from a variety of habitat-disturbing anthropogenic activities, including oil and gas wells, roads, pipelines, transmission lines, and other tall structures. Lek buffers have two primary purposes. First, when buffers are sufficient in size they can reduce the likelihood of lek abandonment due to development and

habitat conversion.[82] Second, lek buffers of sufficient size protect GRSG nesting and early brood-rearing habitat that surrounds the lek.[83] Leks are only occupied by male GRSG when there is surrounding sagebrush habitat for females to nest. Research has demonstrated that if the nesting habitat around the lek is degraded or removed, lek attendance will decline and the lek will eventually become inactive.[84]

A 2016 study in Wyoming found that current regulations for oil and gas development are not preventing lek attendance declines in development areas.[85] According to the Wyoming study, on average, lek attendance was stable when no oil and gas development was present within 4 miles. The study also noted that areas not protected under the Wyoming plan are not subject to Core Area (PHMA) regulations and thus may experience larger increases in oil and gas development and, therefore, larger declines in lek attendance,[86] which often leads to complete lek abandonment.[87]

Studies from different states in the GRSG range have looked at lek buffers and protection of breeding (e.g., nest sites) and summer habitats surrounding lek sites. A 2016 study in Utah recommended buffers of 3 to 5 miles between disturbed areas and sage-grouse breeding and summer habitats, respectively.[88] Similarly, a study in California suggests a 3.1-mile and 4.7-mile buffer for non-migratory and migratory sage-grouse populations, respectively.[89]

As part of the 2015 GRSG RMPA planning process, the Department of the Interior commissioned the USGS to review the scientific information on conservation buffer distances

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[82] B. L. Walker, D. E. Naugle, and K. E. Doherty, "Greater Sage-Grouse Population Response to Energy Development and Habitat Loss," *Journal of Wildlife Management* 71 (2007): 2644–54. http://www.bioone.org/doi/abs/10.2193/2006-529; J. E. Hess and J. L. Beck, "Disturbance factors influencing Greater Sage-Grouse lek abandonment in north-central Wyoming," *Journal of Wildlife Management* 76 (2012): 1625–34; S. T. Knick, S. E. Hanser, and K.L. Preston, "Modeling ecological minimum requirements for distribution of greater sage-grouse leks: implications for population connectivity across their western range, U.S.A.," *Ecology and Evolution* 3 (2013): 1539–51; Manier et al., Conservation buffer distance estimates for Greater Sage-Grouse—A review.

[83] J. W. Connelly, C. A. Hagen, and M. A. Schroeder, "Characteristics and dynamics of greater sage-grouse populations," *Studies in Avian Biology* 38 (2011): 53–67; Manier et al., Conservation buffer distance estimates for Greater Sage-Grouse—A review.

[84] Walker et al., "Greater Sage-Grouse Population Response to Energy Development and Habitat Loss"; S. M. Harju, M. R. Dzialak, R. C. Taylor, L. D. Hayden-Wing, and J. B. Winstead, 2010. "Thresholds and Time Lags in Effects of Energy Development on Greater Sage-Grouse Populations," *Journal of Wildlife Management* 74 (2010): 437–48. http://www.bioone.org/doi/abs/10.2193/2008-289; Knick et al., "Modeling ecological minimum requirements for distribution of greater sage-grouse leks: implications for population connectivity across their western range, U.S.A."

[85] Adam W. Green, Cameron L. Aldridge, and Michael S. O'donnell, "Investigating impacts of oil and gas development on greater sage-grouse," *Journal of Wildlife Management* 81(1) (2017): 46-57.

[86] Green et al., "Investigating impacts of oil and gas development on greater sage-grouse."

[87] Walker et al., "Greater Sage-Grouse Population Response to Energy Development and Habitat Loss."

[88] D. K. Dahlgren, T. A. Messmer, B. A. Crabb, R. T. Larsen, T. A. Black, S. N. Frey, E. T. Thacker, R. J. Baxter, and J. D. Robinson, "Seasonal movements of greater sage-grouse populations in Utah—Implications for species conservation," *Wildlife Society Bulletin* 40(2): 2016: 288–99. https://onlinelibrary.wiley.com/doi/abs/10.1002/wsb.643

[89] P.S. Coates, M. L. Casazza, E. J. Blomberg, S. C. Gardner, S. P. Espinosa, J. L. Yee, L. Wiechman, and B. J. Halstead, "Evaluating Greater Sage-Grouse seasonal space use relative to leks: Implications for surface use designations in sagebrush ecosystems," *Journal of Wildlife Management* 77 (2013): 1598–1609.

for sage-grouse.[90] The resulting study recommended there be a 3.1-mile buffer between leks and infrastructure related to energy development. It is important to stress that this distance does not result in 100% protection for sage-grouse:

> [T]he minimum distance inferred here (5 km [3.1 miles]) from leks may be insufficient to protect nesting and other seasonal habitats. Based on the collective information reviewed for this study, conservation practices that address habitats falling within the interpreted distances may be expected to protect as much as 75 percent to 95 percent of local population's habitat utilization.[91]

These, and other peer-reviewed studies well established as the best available science, intimate that the use of a smaller 0.6-mile buffer around leks in PHMA and 0.25-mile NSO buffer for leks in certain states or GHMA may not be adequate to reverse declining GRSG populations.[92] In this planning process, the BLM should evaluate the latest science to determine whether the current lek buffers are sufficient. The BLM should also consider whether large variations in site-specific conditions, such as topography, merit site-specific consideration of ecologically appropriate set-backs.

In the draft EIS, descriptions of the various lek buffers proposed are scattered across the document, which unfortunately makes it difficult for readers to understand the full range of lek buffers proposed. Furthermore, they vary considerably across the range regarding both the land allocations subject to lek buffers and the size of the buffers, and so fail to achieve the goal of increasing consistency in management across the range.

It is clear, however, that most of the proposed buffers are insufficient to protect GRSG leks. They are inconsistent with the best available science as summarized in Mainier et al. 2014 and corroborated in more recent research, and will not sustain GRSG populations. Of particular concern are NSO buffers for fluid mineral development in Wyoming PHMA under alternative 5 (0.6 miles in PHMA), and in all GHMA under both alternatives 4 and 5 (variously 0.25, 0.6, or 2 miles), as well as buffers for minor ROWs (0.6 or 1.2 miles). According to Manier et al., 2014, all of these buffers should be at least 3.1 miles.

Although there are a minority of states where some state-specific criteria apply buffers more closely aligned with Manier et al., 2014 (primarily Colorado, Idaho, and Utah), we recommend

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[90] Manier et al., Conservation buffer distance estimates for Greater Sage-Grouse—A review.

[91] Manier et al., Conservation buffer distance estimates for Greater Sage-Grouse—A review, 2.

[92] In addition to Manier et al., 2014, other papers suggesting lek buffers need to be larger to be effective include Coates et al., "Evaluating Greater Sage-Grouse seasonal space use relative to leks: Implications for surface use designations in sagebrush ecosystems" (suggesting that a 5-km [3.1-mi] and 7.5-km [4.7-mi] km buffer distance around leks, for non-migratory and migratory sage-grouse populations respectively, encompasses approximately 90% of sage-grouse seasonal habitat use, and a 5 km [3.1-mi] buffer around leks includes 95% of GRSG nests) and S. T. Knick and S. E. Hanser, "Connecting pattern and process in Greater Sage-Grouse populations and sagebrush landscapes," *Studies in Avian Biology* 38 (2011): 383–405 (finding in a range-wide and multiyear [1965 and 2007] study that the level of the human footprint within 5-km [3.1-mi] of a lek was predictive of lek abandonment).

the BLM reconsider the proposed lek buffers in the draft EIS and bring them more fully into alignment with the best available science.

VII. The BLM should manage mineral development, especially oil and gas development, to avoid impacts to GRSG to the maximum extent possible.

A. Oil and gas development is the leading threat to GRSG in the eastern portion of its range.

Disturbance from oil and gas development is a primary threat to GRSG. The 2015 RMPAs included provisions and stipulations designed to minimize the impacts of oil and gas development on GRSG and its habitat, but these measures have not been implemented with consistency or, in some cases, at all. The enjoined 2019 RMPAs would have weakened the BLM's ability to manage oil and gas development for GRSG conservation, and it is imperative that this planning process result in a durable approach to oil and gas (and other energy and mineral) development that reflects the best science and conserves GRSG populations and habitat.

Nonrenewable energy development has emerged as a major issue in GRSG conservation because areas currently under development contain some of the highest densities of GRSG and other sagebrush-obligate species in western North America.[93] The impact of oil and gas (and similar development) on GRSG was summarized by Remington et al. 2021 as follows:

> Approximately 8 percent of sagebrush habitats across the entire biome are directly affected by oil and gas development, with greater than 20 percent of sagebrush habitats affected in the Rocky Mountain area. Several million additional acres within the sagebrush biome have been impacted by mining activities and alternative energy development, such as wind and solar. Sagebrush-associated wildlife can be impacted by loss and degradation of habitat, as well as by numerous indirect effects such as noise, exposure to contaminants, and disturbance from vehicles and human presence.[94]

Not only does construction of oil and gas wells impact GRSG habitat, associated infrastructure such as roads and pipelines further fragment habitat, and create vectors for invasive species, wildfires, and predators, both native predators and novel predators, to access GRSG habitat.[95] A comprehensive review of the literature in this area can be found in Remington et al. 2021.[96]

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[93] Naugle et al., "Sage-Grouse and Cumulative Impacts of Energy Development."
[94] Remington et al., Sagebrush conservation strategy—Challenges to sagebrush conservation, 163.
[95] Remington et al., Sagebrush conservation strategy—Challenges to sagebrush conservation, 171.
[96] Remington et al., Sagebrush conservation strategy—Challenges to sagebrush conservation, 171-72. See also Naugle et al., "Sage-Grouse and Cumulative Impacts of Energy Development."

B. The BLM should prioritize areas outside of GRSG habitat for oil and gas development.

A key component of the 2015 RMPAs required the BLM to prioritize new oil and gas leasing outside of PHMA and GHMA in order to protect that habitat from future disturbance. Prioritization of development outside of priority habitat is also a core component of state GRSG regulations and policies; for example, the Wyoming Greater sage-grouse Core Area Protection Executive Order states: "To ensure continued sustainability of Wyoming's economy, incentivizing and prioritizing development outside of Core Population Areas shall be a priority."[97]

In 2014, when the 2015 planning process was unfolding, there was only a 4% overlap between PHMA and existing coal and oil and gas leases on federal lands.[98] Approximately 79% of federal lands and minerals in existing PHMA have a zero to low oil and gas development potential, and approximately 71% of federal lands and minerals in the principal GRSG states that have a medium to high oil and gas development potential are located outside existing PHMA.[99] In the current planning process, protection of GRSG habitat from oil and gas development should be maintained, and this can be done with little impact on oil and gas development opportunities.[100]

In 2018, the BLM reinterpreted its prioritization directive in Instruction Memorandum 2018-026—a policy that a court later stuck down.[101] The BLM has not adopted new national guidance on the prioritization requirement and has represented to the Montana court that the agency's previous prioritization guidance (adopted in 2016) also is not in effect. As a result, there is currently no national guidance providing direction on how prioritization is to be applied. At present, the BLM must comply with the prioritization requirement of the 2015 RMPAs when considering leasing parcels in PHMA and/or GHMA, and many of our organizations have consistently advocated for the BLM to defer leasing all parcels containing PHMA and/or GHMA at least until new national guidance is issued. In the current planning process, the BLM should include a prioritization objective similar to the 2015 RMPAs.

Past experience suggests that new prioritization directives will need to be more robust than past efforts. In its Rangewide Monitoring Report for 2015-2020, the BLM found there have been 604 land use authorizations across a variety of types of land use authorization (e.g., oil and gas,

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[97] State of Wyoming, Executive Order 2019-3: Greater sage-grouse Core Area Protection, August 21, 2019. https://wgfd.wyo.gov/media/15359/download?inline

[98] C. LeBeau, J. Fruhwirth, and J. Boehrs, Analysis of the Overlap between Priority Greater Sage-Grouse Habitats and Existing and Potential Energy Development across the West, Final Report, October 16, 2014, Prepared for Western Values Project, Bozeman, Montana. Prepared by Western EcoSystems Technology, Inc. (WEST), Cheyenne, Wyoming.

[99] C. LeBeau C. and G. Gardner, Analysis of the Overlap between Priority Habitat Management Areas and Existing and Potential Energy Development across the West, Final Report, June 9, 2017, Prepared for Backcountry Hunters & Anglers, Denver, Colorado. Prepared by Prepared by Western EcoSystems Technology, Inc. (WEST), Laramie, Wyoming.

[100] An exception to this trend is in Wyoming, where some of the best GRSG habitat shows high potential for oil and gas development.

[101] Montana Wildlife Federation v. Bernhardt, No. 18-cv-69-GF-BMM, 2020 WL 2615631 (D. Mont. May 22, 2020). This policy stated that prioritization would apply only where a "backlog" of leasing requests exists.

rights-of-way, etc.) in PHMA and IHMA covering approximately 73,000 acres.[102] In Colorado, the BLM approved over 34,000 acres of surface-disturbing authorizations within priority habitat since 2015, followed by Nevada (approximately 22,000 acres) and Wyoming (approximately 13,000 acres).[103] Importantly, the acreages cited for these authorizations represents the surface disturbance of the land use authorization, which does not include the far further-reaching indirect effects of the disturbances (noise, etc.) that can impact GRSG miles away from the development itself.

The BLM should adopt a coherent prioritization that it can apply universally across field offices within identified GRSG PHMA and GHMA. In addition, appropriate prioritization guidance would be consistent with the BLM's newly-issued rule on onshore oil and gas development, which specifies that when offering lands for lease, the BLM must consider "[t]he presence of important fish and wildlife habitats or connectivity areas, giving preference to lands that would not impair the proper functioning of such habitats or corridors."[104]

We recommend that, as this planning process continues, the BLM adopt prioritization language proposed in alternative 3, which states: "If possible, place [oil and gas] development outside of PHMA (and IHMA)."[105]

Additional approaches that the BLM should consider include the following:

- Look for opportunities to modify parcel boundaries to remove PHMA and GHMA before including them in lease sales;
- Take into account the availability of other parcels for lease in all field offices;
- If parcels are within identified PHMA and have low or moderate potential for oil and gas, they should not be included in a lease sale;
- If parcels are within identified PHMA and have high potential for oil and gas, are not in proximity to existing disturbance and/or require additional infrastructure to be developed, there should be a strong presumption against including them in a lease sale, especially if there are other parcels that do not have PHMA and do not have other high-priority resource conflicts;
- If parcels within identified PHMA or GHMA have high potential for oil and gas and are in close proximity to existing disturbance and infrastructure and/or are already within an existing oil and gas unit that has been analyzed in an EIS, then they may be considered for leasing;
- Parcels outside PHMA should be considered for leasing prior to parcels in PHMA;
- Parcels outside GHMA should be considered for leasing prior to parcels in GHMA; and
- For parcels in PHMA or GHMA that are included in lease sales, there should be an evaluation of other conditions of approval that will limit any new infrastructure or other stressors on sage-grouse.

[102] Herren et al., Greater sage-grouse plan implementation: Rangewide monitoring report for 2015–2020, viii.
[103] Herren et al., Greater sage-grouse plan implementation: Rangewide monitoring report for 2015–2020, viii.
[104] Fluid Mineral Leases and Leasing Process, 89 Fed. Reg. 30916, 30986 (April 23, 2024).
[105] Draft EIS, 2-41.

Prioritizing appropriate lands outside of GRSG habitat for oil and gas development is the best way to ensure the BLM achieves the goal of conserving GRSG and also maintains production of oil and gas (and other essential minerals and energy resources). This is the essence of multiple-use management.

C. We support the provision of alternative 5 that provides for no surface occupancy for oil and gas operations in PHMA outside of Wyoming.

By effectively prioritizing non-GRSG habitat for oil and gas development, the BLM can avoid the drastic step of closing vast acreages to oil and gas development entirely. For this reason, we do not support the approach of alternative 3, which would close all GRSG habitat to oil and gas leasing.[106]

Assuming that the BLM applies rigorous prioritization criteria and adopts the approach to PHMA and high-value areas (such as the Golden Triangle in Wyoming) laid out in section III of these comments, alternative 5 could be compatible with effective GRSG conservation. By applying NSO stipulations to oil and gas in PHMA across most of the range, the BLM will realize most of the benefits of the alternative 3 approach while still allowing access to important natural resources through directional drilling and other technologies. In Wyoming, which is blessed with an abundance of both GRSG and oil and gas resources, we support the alternative approach of applying NSO stipulations only within lek buffers. However, we reiterate our discussion in section VI of these comments, and urge the BLM to apply scientifically-sound lek buffers of no less than 3.1 miles, with NSO stipulations inside that area, as well as the other stipulations detailed in the draft EIS.[107]

D. We support the draft EIS's approach of using lek buffers and other stipulations to protect the most important GRSG habitat in GHMA.

Lek buffers can be effectively used to conserve the most important GRSG habitat in GHMA. The draft EIS contemplates a variety of land allocation limitations within GHMA lek buffers, including both controlled surface use and timing limitation stipulations. These vary across state lines and between alternatives 4 and 5, and a detailed analysis of each stipulation is beyond the scope of these comments. In general, when finalizing these provisions in the final EIS and accompanying RMPAs/RODs, the BLM should apply the best available science and ensure that leks within GHMA are adequately protected from impacts of oil and gas and other fluid mineral development. These leks and the surrounding habitat represent the best hope for future expansion of GRSG populations, and if they are not protected, we will be consigning the species to a slow but inevitable decline. Furthermore, leks in GHMA act as genetic exchange hubs providing genetic links to different GRSG populations within PHMAs.[108]

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[106] Draft EIS, 2-41.

[107] See Manier et al., Conservation buffer distance estimates for Greater Sage-Grouse—A review. A larger buffer of 4 miles would be meaningfully more protective.

[108] Cross et al., The genetic network of greater sage-grouse: Range-wide identification of keystone hubs of connectivity.

E. WEMs should be considered for oil and gas development in GHMA, but not PHMA.

The BLM should limit the availability of waivers, exceptions, and modifications (WEMs) for oil and gas stipulations, as intended in the 2015 RMPAs, to ensure that these provisions do not undercut the purpose of the plans. In general, the requirements laid out in the draft EIS for projects to secure WEMs are appropriate and rigorous, including scientific analysis of the area by a biologist, requirements for the complete mitigation of any impacts on adjacent habitat, including indirect and cumulative impacts, clear documentation, and public review.[109] We hope and expect that the BLM will both retain these requirements in the final EIS and then rigorously enforce them.

We wish to reiterate, however, our previous discussion of compensatory mitigation for WEMs in section IV.E of these comments. Ideally, WEMs for oil and gas would not be permitted in PHMA at all, but only in GHMA. Failing that, the use of WEMs in PHMA should be avoided to the maximum extent possible. We furthermore believe that the challenges of consistent and thorough application of compensatory mitigation requirements stacked on top of the challenges of consistent and thorough application of WEM requirements introduces a high degree of risk. It seems likely that BLM field staff – through no fault of their own – will be unable to consistently and reliably meet their obligations under the revised GRSG RMPAs and issues will fail to be identified and addressed, to the detriment of GRSG populations. Given this risk, we recommend that at a minimum, the final EIS and RMPAs/RODs not authorize the use of compensatory mitigation in order to justify WEMs in PHMA.

In addition, we recommend that any WEM authorizations included in the final EIS and RMPAs/RODs require the concurrence of the BLM State Director and applicable state wildlife agency. This approach would strengthen the consistency of the BLM's application of WEMs and ensure that WEMs are handled at the appropriate high level within the agency, reflecting their significance as departures from the land management practices adopted through the RMPA process. Moreover, it would ensure that the BLM considers the cumulative impacts of WEMs across a state when considering additional requests.

F. We support NSO and other appropriate stipulations for geothermal energy development.

Most forms of renewable energy will be addressed in section IX of these comments. Geothermal energy, however, is a fluid-based underground resource similar to oil and gas. Geothermal facilities draw water from deep underground where high ambient temperatures can be found, extract the heat energy from the water, and then return the water to the earth. Geothermal exploration and operations use technologies similar to both oil and gas development (bore holes, surface pumps, etc.) and renewable energy projects (transmission lines, gen-ties), all of which have adverse impacts on GRSG.[110]

[109] See draft EIS, 2-47 through 2-91.

[110] For discussion of geothermal impacts on GRSG, see Peter S. Coates, Brian G. Prochazka, Shawn T. O'Neil, Sarah C. Webster, Shawn Espinosa, Mark A. Ricca, Steven R. Mathews, Michael Casazza, and David J.

On BLM-managed lands, geothermal energy is managed as a fluid mineral like oil and gas, and with minor exceptions is subject to the same management approach, including stipulations. Under both alternatives 4 and 5, the draft EIS would apply NSO stipulations to geothermal development in PHMA in every state (unlike oil and gas, where Wyoming PHMA would not be NSO under alternative 5), and other, less restrictive, stipulations in GHMA.

Geothermal energy development is currently experiencing an explosion of interest, especially in Nevada, including in northeastern Nevada where high-potential areas extensively overlap PHMA.[111] Under the 2008 Final Programmatic Environmental Impact Statement (PEIS) for Geothermal Leasing in the Western United States, 143 million acres of BLM-managed lands were identified as suitable for geothermal development.[112] Initial utilization of this resource for clean energy was slow, but is now gaining momentum. In 2022, the BLM approved five new geothermal projects (3 in Nevada, 1 each in California and Utah),[113] and in 2024 the BLM adopted from the U.S. Forest Service and U.S. Navy two categorical exclusions (CEs) allowing geothermal exploration operations on BLM lands without additional NEPA review.[114]

Adverse impacts to GRSG populations are not limited to geothermal energy operations but can also occur as a result of geothermal exploration. Especially because geothermal resources are concentrated in the desert southwest, even exploration could lead to severe local impacts on specific GRSG populations. Only rigorous project-level NEPA analysis can give the BLM and the public the necessary insight into those impacts to determine if a specific project should go forward or not.

We support the BLM's management approach to geothermal energy development, especially NSO stipulations for all PHMA. As with the oil and gas industry, we urge the agency to apply the best science and require appropriate (minimum 3.1-mile[115]) lek buffers in GHMA. We also recommend geothermal energy development be kept out of high-value seasonal habitats and connectivity corridors.

Delehanty, "Geothermal energy production adversely affects a sensitive indicator species within sagebrush ecosystems in western North America," *Biological Conservation* 280 (April 2023): 109889. https://www.sciencedirect.com/science/article/pii/S0006320722004426; Alexandra Weill, "Buildings maps to help geothermal energy and greater sage-grouse coexist in Nevada's sagebrush country," *U.S. Geological Survey*, March 6, 2023. https://www.usgs.gov/news/featured-story/building-maps-help-geothermal-energy-and-greater-sage-grouse-coexist-nevadas

[111] See draft EIS, 3-36.

[112] Bureau of Land Management and U.S. Forest Service, Final Programmatic Environmental Impact Statement (PEIS) for Geothermal Leasing in the Western United States, October 2008. https://www.blm.gov/sites/blm.gov/files/Geothermal_PEIS_final.pdf.

[113] US Department of Interior, Bureau of Land Management. Public Land Renewable Energy – Fiscal Year 2022 [Factsheet].

[114] Bureau of Land Management, "BLM adopts categorical exclusions to expedite geothermal energy permitting," press release, April 15, 2024. https://www.blm.gov/press-release/blm-adopts-categorical-exclusions-expedite-geothermal-energy-permitting

[115] See Manier et al., Conservation buffer distance estimates for Greater Sage-Grouse—A review.

G. The draft EIS provides appropriate limitations on saleable minerals, non-energy leasable minerals, coal mining, and locatable minerals for the protection of GRSG.

In the context of other (non-energy) minerals, accurate mapping of the most important habitat (see section III of these comments) is essential to achieving the purposes of this planning process and the BLM's multiple-use mission. All types of surface-disturbing mining are destructive to GRSG habitat and damaging to GRSG populations.[116] We support the draft EIS's strong, protective approach to mining activities in GRSG habitat, especially PHMA, under both alternatives 4 and 5.[117]

We note that development of domestic sources of critical minerals is essential to meeting current goals for renewable energy development (see section IX of these comments) and addressing climate change. As such, it is essential the BLM strike a balance between competing land uses and meet its multiple-use obligations by protecting the most sensitive GRSG habitat while developing mineral resources in the best areas for that purpose. Given the dire situation of GRSG populations and the purpose of this planning process, where those values conflict directly, the BLM must favor GRSG conservation. We support numerous provisions of the draft EIS that do just that.

We support closure of PHMA to saleable mineral development, excluding free use permits and expansions of existing pits, but we urge that those exclusions be used sparingly. We support closure of PHMA to non-energy leasable minerals, again urging that exceptions in California, Idaho, Nevada, and Wyoming be used sparingly.

For states where coal is present, we recognize the need to adopt a flexible approach that evaluates the suitability of a specific site for a specific coal mining method. However, we urge the BLM to be exceedingly thorough in project-level NEPA analysis, and extremely cautious when authorizing development. Because accessible coal deposits are highly localized, there is a risk of acute effects in one area destroying essential GRSG habitat, reducing habitat connectivity, and undermining goals for species recovery. To address this, it is essential that the BLM apply disturbance caps at the correct scale (see section VIII of these comments) to avoid excessive development impacts in important GRSG areas.

Locatable mineral management is an area of comparative weakness in the draft EIS, if only because the BLM's intentions are unclear. As previously explained (see section II.C.1 of these comments), the BLM never completed the withdrawal from mineral location and entry that was planned for SFAs in 2015 and relied upon by the FWS in its not warranted finding. Instead, that process is ongoing, with new NEPA documents expected later this year. Under alternative 3, the BLM would recommend all GRSG HMAs for withdrawal. Under alternatives 4 and 5, the draft EIS is silent on any potential mineral withdrawal, noting only that one area of Montana has already been withdrawn.[118] Consistent with the approach articulated in section III of these comments, recommending that the BLM protect the most important areas of GRSG habitat more

[116] See generally Remington et al., Sagebrush conservation strategy—Challenges to sagebrush conservation, 163-72.
[117] See draft EIS, 2-14 through 2-19.
[118] Draft EIS, 2-16.

highly than other PHMA, we request that the BLM advance such areas for withdrawal from location and entry.

VIII. We support the approach to disturbance caps under alternative 5, with certain improvements.

To further address the threat imposed by infrastructure associated with development, the 2015 RMPAs included disturbance caps for anthropogenic disturbance within PHMA. Once a disturbance cap is reached, additional development will not be permitted on federal lands within the relevant PHMA. Caps were set at 3% or 5%, depending on the state.[119] We are pleased to see that the draft EIS is revisiting these disturbance caps. Most of the draft EIS' approach to disturbance caps is an improvement over the 2015 RMPAs, although there are opportunities for further improvement as well.

First, approaches to disturbance cap calculation are inconsistent across state lines. This is the case under the 2015 RMPAs, and while the draft EIS offers significant improvements in this area, inconsistencies remain. The first issue is the appropriate scale for calculation of disturbance caps. The 2015 plans used both the project scale and the biologically significant unit (BSU) scale, and BSUs were calculated differently in each state.[120] The draft EIS improves on this by using project-level and HAF fine scale population units. Compared to BSU scales, the HAF fine scale will introduce greater consistency to disturbance caps across the range and in some cases use smaller areas, allowing for more precise data.

There is also variation in definitions of what disturbances are actually included in the disturbance cap calculation. As previously discussed, disturbances are included regardless of surface ownership, in order to capture cumulative impacts. This important approach should be retained. We also appreciate the fact that project-level boundaries for disturbance calculations would be set at a 4-mile radius, which is a conservative approach consistent with the best science on impact distances.[121]

While the proposed disturbance cap calculation captures most important sources of anthropogenic disturbance,[122] there are others that are omitted, as well as non-anthropogenic

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[119] Draft EIS, 2-29.

[120] See, e.g. US. Forest Service, Greater Sage-Grouse Implementation Guide Minerals, Ver. 1.4, Utah, Nevada, Idaho/SW Montana, Wyoming, NW Colorado, accessed May 3, 2024, at 4. https://www.fs.usda.gov/sites/default/files/media_wysiwyg/minerals_guide_1_4_docx.pdf.

[121] E.g. Manier et al., Conservation buffer distance estimates for Greater Sage-Grouse—A review.

[122] Specifically, Oil and gas wells and development facilities; Coal mines; Wind developments (e.g., towers, sub-stations, etc.); Solar fields; Geothermal development facilities; Mining (active locatable, nonenergy leasable and saleable/mineral material developments); Roads (transportation features with a maintenance intensity of level 3 or 5 – see BLM Technical Note 422 – Roads and Trails Terminology, 2006 or as updated) (does not include two-tracks); Railroads; Power lines; Communication towers; Other vertical infrastructure, as well as developed rights-of-way with habitat loss (e.g., pipelines); Coal bed methane ponds (at the project scale); Meteorological towers (e.g., wind energy testing) (at the project scale); Nuclear energy facilities (at the project scale); Airport facilities and infrastructure (at the project scale); Military range facilities and infrastructure (at the project scale);

impacts such as wildfire.[123] In addition, while most states would be subject to a disturbance cap of 3%, alternative 5 would apply a higher disturbance cap to the project-scale cap in Montana and Wyoming. This approach is consistent with the 2015 RMPAs and for good reason: the two issues are interrelated. In Montana and Wyoming, the 5% project-level disturbance cap would *include* both wildfire and agricultural impacts, two sources of disturbance that are omitted from the 3% disturbance caps in other states.

The best available science supports disturbance caps of 3%. In one study, brood-rearing GRSG established home ranges in areas that had 3.5% anthropogenic surface disturbance on average, including both active disturbance and reclamation.[124] In another study, Kirol et al. 2020 showed that during reproductive life stages female GRSG from multiple regions in Wyoming consistently occupied areas with less surface disturbance relative to what was available to them. Ninety percent of nesting and brood-rearing locations were in areas with < 3% disturbance within a ~3-km2 area.[125] Researchers have also pointed to major behavior changes at similar percentages of surface disturbance when studying impacts of energy disturbance on other sagebrush-associated species. For instance, the presence and abundance of pygmy rabbits (*Brachylagus idahoensis*) declines sharply once oil and gas surface disturbance reaches 2% and migrating mule deer (*Odocoileus hemionus*) rarely use areas with greater than 3% oil and gas disturbance.[126] Within crucial winter range, both mule deer and the sagebrush-obligate pronghorn (*Antilocapra americana*) avoid all human-disturbed habitat, even within populations that can tolerate low levels of disturbance during migration.[127]

Because disturbance caps of 3% represent the best available science, and project-level caps of 5% in Montana and Wyoming are more inclusive and function as caps of 3% or less, we support the approach to disturbance caps proposed under alternative 5.

As in the 2015 RMPAs, the draft EIS includes criteria that would allow a project to be excepted from the disturbance cap and go forward even if it would cause cumulative disturbances that exceed the cap. In 2015, this was only available in Idaho, Montana, Nevada, and Wyoming, and in Idaho and Nevada it was qualified by a requirement that projects exceeding the cap would

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Hydroelectric plants/facilities (at the project scale); and Recreation areas facilities and infrastructure larger than 0.25 acres (e.g., parking lots, campgrounds, trail heads, etc.) (at the project scale). See draft EIS, 2-30 thru 2-31.

[123] Specifically, Wildfire; Agriculture; Vegetation treatments; Residences; Barns; Fencing; Range improvements; and All other impacts. See draft EIS, 2-31.

[124] C. P. Kirol, "Patterns of nest survival, movement and habitat use of sagebrush-obligate birds in an energy development landscape" (PhD dissertation, University of Waterloo, Waterloo, Canada, 2021). Although this study found the cut-off at 3.5% rather than 3%, this was because it included reclamation areas and was in an area in northwestern Wyoming that has so much disturbance that little to no areas are available that haven't been disturbed – females instead pick the least disturbed areas.

[125] C. P. Kirol, K. T. Smith, N. E. Graf, J. B. Dinkins, C. W. Lebeau, T. L. Maechtle, A. L. Sutphin, and J. L. Beck, "Greater sage-grouse response to the physical footprint of energy development," *Journal of Wildlife Management* 84 (2020): 989–1001.

[126] S. S. Germaine, S. K. Carter, D. A. Ignizio, and A. T. Freeman, "Relationships between gas field development and the presence and abundance of pygmy rabbits in southwestern Wyoming," *Ecosphere* 8(5) (2017): e01817; H. Sawyer, M. S. Lambert, and J. A. Merkle, "Migratory disturbance thresholds with mule deer and energy development," *Journal of Wildlife Management* 84(5) (2020): 1–8; M. Sandoval Lambert, H. Sawyer, and J. A. Merkle, "Responses to natural gas development differ by season for two migratory ungulates," *Ecological Applications* 32 (2022): 1–13.

[127] Lambert et al., "Responses to natural gas development differ by season for two migratory ungulates."

only be permitted if they resulted in a net benefit to GRSG. Under the draft EIS, disturbance cap exceptions would be available in all states, although only at the project scale, and only if extensive requirements are met. In broad terms, these requirements include concurrence from the BLM State Director; proper and complete application of the mitigation hierarchy; and an additional analysis demonstrating consolidation of disturbances, use of RMP-designated utility corridors, or a net benefit to GRSG.[128]

We caution the BLM against the application of disturbance cap exceptions except in very rare circumstances. The criteria laid out in the draft EIS are comprehensive, and if rigorously applied should reduce inadvertent impacts to GRSG populations due to exceptions. But allowing any disturbance cap exceptions creates a risk of indirect and cumulative impacts to GRSG populations. This is exactly the situation that disturbance caps are intended to forestall.

The requirement that disturbance cap exceptions receive the concurrence of the BLM State Director is a useful backstop that would ensure exceptions are granted in consistent (and hopefully rare) circumstances. If disturbance cap exceptions are included in the final EIS and RMPAs/RODs, we recommend that this requirement be retained. We also support the requirement that when compensatory mitigation is applied to disturbance cap exceptions, it should either be completed in advance of disturbances (alternative 4), or account for the level of risk that a compensatory mitigation action may fail or not persist for the full duration of the impact compensated for (alternative 5).[129]

IX. We support the approach under alternative 4 of excluding renewable energy infrastructure from important GRSG habitat.

Renewable energy development is a challenging issue for GRSG conservation, due to exploding demand for renewable energy across the range, including from wind and solar and increasingly geothermal sources, and the associated need for new transmission lines. Renewable energy development is a high priority for many states, as well as the federal government.

At the federal level, Executive Order 14008 and the Energy Act of 2020 (Pub. L. 116-260, Division Z) direct the BLM to prioritize renewable energy deployment on public lands, and the agency is currently developing a final EIS for solar energy development across 11 western states (the Solar PEIS).[130] On May 1, 2024, the BLM issued its final rule on Rights-of-Way, Leasing, and Operations for Renewable Energy.[131] The Biden Administration has met and is on its way to exceeding its goal of permitting 25 gigawatts of onshore renewable energy on public lands by

[128] Draft EIS, 2-34 through 2-39. This brief description omits additional technical requirements.
[129] See, e.g. draft EIS, 2-35.
[130] Bureau of Land Management, Solar Energy, accessed May 14, 2024. https://www.blm.gov/programs/energy-and-minerals/renewable-energy/solar-energy
[131] Rights-of-Way, Leasing, and Operations for Renewable Energy, 89 Fed. Reg. 35634 (May 1, 2024).

2025,[132] and in Fiscal Year 2022 the BLM permitted 5,670 megawatts of onshore renewable energy, nearly doubling Fiscal Year 2021.[133] The Inflation Reduction Act of 2022 (Pub. L. 117-169) reduced rents and extended tax incentives for the wind and solar industries until at least 2034, while grants under the Infrastructure Investment and Jobs Act (Pub. L. 117-58) are funding projects. As a result, the financial outlook for these sectors is likely to remain very strong, accelerating the renewable energy growth that is already taking place across the West.[134]

These initiatives are bearing fruit, causing a noticeable impact on the range. At present, on BLM-managed lands there are 383,833 acres of proposed wind, solar, and geothermal projects (including gen-ties) as well as 182,780 acres in NEPA review and 201,053 acres in preliminary review.[135]

The impacts of renewable energy development on GRSG, like other forms of infrastructure, are considerable. Renewable energy infrastructure generally has a large footprint per megawatt (especially solar energy), tall structures (especially wind and transmission lines), and is characterized by ground disturbance such as road construction, site clearing, grading, vegetation and soil removal, etc.[136] Although vegetation may be restored following construction and/or decommissioning of renewable energy facilities, our understanding of how much GRSG respond to the presence/absence of vegetation vs. artificial structures themselves is still evolving.[137]

Renewable energy infrastructure impacts GRSG populations in similar ways to other energy and related infrastructure on the landscape. This was recently validated by a meta-analysis of 21 other studies that concluded that there are no "obvious differences in the effect sizes between types of infrastructure" and therefore "current grouse conservation actions could be applicable to renewable energy development."[138]

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[132] Scott Streater, "BLM on pace to exceed 25K-megawatt renewable energy goal," *E&E News*, April 20, 2022. https://subscriber.politicopro.com/article/eenews/2022/04/20/blm-on-pace-to-exceed-25k-megawatt-renewable-energy-goal-00026578

[133] US Department of Interior, Bureau of Land Management. Public Land Renewable Energy – Fiscal Year 2022 [Factsheet], accessed May 14, 2024. https://www.blm.gov/sites/default/files/docs/2023-12/FY22%20Report%20to%20Congress%20Fact%20Sheet.pdf

[134] E.g. M. Booth, "What's driving sudden flare of solar energy and storage in Colorado?", *Colorado Sun*, June 21, 2023, https://coloradosun.com/2023/07/21/colorado-renewable-energy-surge-project-growth/.

[135] See Bureau of Land Management, Active Renewable Projects, accessed May 9, 2024. https://www.blm.gov/programs/energy-and-minerals/renewable-energy/active-renewable-projects. See also U.S. Solar Photovoltaic Database, https://eerscmap.usgs.gov/uspvdb/viewer/#3/37.25/-96.25

[136] See generally Remington et al., Sagebrush conservation strategy—Challenges to sagebrush conservation, 172-76. It should be noted that our understanding of the impact of wind and other renewable energy sources on GRSG is still evolving. See, e.g., John D. Lloyd, Cameron L. Aldridge, Taber D. Allison, Chad W. LeBeau, Lance B. McNew, and Virginia L. Winder, "Prairie grouse and wind energy: The state of the science and implications for risk assessment," *Wildlife Society Bulletin* 2022: e1305. https://doi.org/10.1002/wsb.1305

[137] For example, recent research suggests that GRSG populations can tolerate the presence of a solar energy facility, see Michael B. Gerringer, Kurt T. Smith, and Karl L. Kosciuch, "Observations of Greater Sage-Grouse at a solar energy facility in Wyoming," *Western North American Naturalist* 82(1) (2022); 196-200, but more research will be needed to see if that population is able to sustain itself over time. As we have previously observed, avoidance behavior is not immediate, but occurs over time as yearlings abandon impacted areas.

[138] C. LeBeau, K. Smith, S. Howlin, A, Tredennick, and K. Kosciuch, "A meta-analysis investigating the effects of energy infrastructure proximity on grouse demography and space use," *Wildlife Biology* 2023(5) (2023), e01087.

GRSG responses to wind energy development are a case in point. In Wyoming, lek counts declined more severely near wind infrastructure, after a 3- or 5-year time lag, than non-impacted leks. Effects of wind infrastructure on lek attendance were weakly evident within 1.5 km (0.93 miles) from a turbine.[139] In an additional study at the same location, females and their chicks used brood-rearing and summer habitats farther from wind infrastructure than what was previously documented.[140]

Accordingly, renewable energy development in GRSG habitat should be approached with similar caution as oil and gas development. Furthermore, most types of renewable energy development presently lack widely-accepted best management practices.[141] This is another reason to take a cautious approach to allowing renewable energy development in important GRSG habitat.

Based on studies such as the BLM's own analysis in the Solar PEIS, other existing reasonably foreseeable development scenarios (RFDS), and projections for various types of renewable energy development, we believe there is more than enough BLM-managed land available to accommodate the necessary renewable energy development expected in the foreseeable future without making important GRSG habitat available.

For these reasons, we support the approach proposed for wind and solar energy in alternative 4 of the draft EIS, and recommend the BLM to close all GRSG PHMA to renewable energy development. This will further the approach of supporting GRSG populations by managing BLM land for intact landscapes. In addition, locating renewable energy development in areas with no to low conflict with GRSG will enable faster permitting and simpler project-level NEPA review for renewable energy projects.

We also support alternative 4's approach to GHMA, which would be managed as avoidance areas for wind and solar development, bolstered by lek buffers and protection for high-value seasonal habitats and connectivity corridors. It also includes a habitat buffer, where GHMA within 0.5 miles of PHMA would be managed as exclusion areas. This is a strong approach to preventing indirect and cumulative impacts from wind and solar development within GHMA from impacting GRSG populations in PHMA. However, we recommend that this habitat buffer be larger, reflecting the best available science on avoidance distances for various renewable energy resources.

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[139] C. W. LeBeau, J. L. Beck, G. D. Johnson, R. M. Nielson, M. J. Holloran, K. G. Gerow, and T. L. McDonald, "Greater sage-grouse male lek counts relative to a wind energy development," *Wildlife Society Bulletin* 41(1) (2017): 17–26. https://doi.org/10.1002/wsb.725

[140] C. W. LeBeau, G. D. Johnson, M. J. Holloran, J. L. Beck, R. M. Nielson, M. E. Kauffman, E. J. Rodemaker, and T. L. McDonald, "Greater sage-grouse habitat selection, survival, and wind energy infrastructure," *Journal of Wildlife Management* 81(4) (2017): 690–711. https://doi.org/10.1002/jwmg.21231

[141] A notable exception is the wind industry, for which there is the FWS' Land-Based Wind Energy Guidelines. U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines, March 23, 2012. https://www.fws.gov/sites/default/files/documents/land-based-wind-energy-guidelines.pdf. In addition, for solar energy development, numerous states have developed their guidelines. See, e.g. Association of Fish and Wildlife Agencies, "Solar Wildlife Working Group," accessed March 5, 2024 https://www.fishwildlife.org/afwa-acts/afwa-committees/solar-wildlife-working-group. However, no renewable energy industry presently has anything like the "Gold Book" for oil and gas development. See Bureau of Land Management, The Gold Book: Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development, 2007, available at https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/operations-and-production/the-gold-book

In contrast, alternative 5 takes a much weaker approach, managing PHMA as avoidance areas, with limited additional protections available for breeding, nesting, and high-value seasonal habitats, limited by exceptions. GHMA would be open to development, subject only to minimization and compensation measures. Renewable energy development is one of relatively few areas of the draft EIS where alternative 5 is dramatically less protective than alternative 4, and we urge the BLM to adopt the wind and solar energy development provisions in alternative 4.

In the following subsections, we provide additional observations and recommendations relevant to wind and solar energy. We also discuss transmission lines, while geothermal was discussed in more detail with other fluid minerals in section VII.F.

A. Wind energy development and GRSG.

The BLM estimates that approximately 20 million acres of BLM-managed land have wind energy potential.[142] To date, 2600 wind turbines have been constructed on BLM-managed lands, but just 288 of them have been constructed within GRSG habitat. However, wind energy development is accelerating. The Department of Energy forecasts that by 2050, the nation will have 404.25 GW of wind energy in service, an increase of over 290 GW compared to 2020.[143] For onshore wind in BLM states, the largest growth would be in Montana, followed by Wyoming.[144]

GRSG persistence is largely inconsistent with wind energy development. Research indicates that GRSG avoid wind turbines.[145] For this reason, we urge the BLM to adopt alternative 4 of the draft EIS for wind energy development.

B. Solar energy development and GRSG.

The BLM is currently in the process of moving from a draft to final EIS for its Solar PEIS planning process, which when complete will result in RMPAs that will govern utility-scale photovoltaic solar (hereinafter PV solar) energy development on BLM lands in all 11 western states.[146] As part of the Solar PEIS process, the BLM relied on the 2015 GRSG RMPAs and identified GRSG PHMA as a resource-based exclusion applicable to all action alternatives, providing that no PV solar development would be permitted in PHMA. Because the mapping of GRSG PHMA and whether or not solar energy development will be permitted in PHMA are among the issues being considered as part of this planning process, it is imperative that the BLM completes a final EIS and RMPAs/RODs for the GRSG that uses a science-based approach to identify GRSG PHMA and exclude those areas from solar energy development. That

[142] Bureau of Land Management, Wind Energy, accessed May 6, 2024. https://www.blm.gov/programs/energy-and-minerals/renewable-energy/wind-energy

[143] U.S. Department of Energy, Map: Projected Growth of the Wind Industry From Now Until 2050, accessed May 6, 2024. https://www.energy.gov/map-projected-growth-wind-industry-now-until-2050

[144] See U.S. Department of Energy, Map: Projected Growth of the Wind Industry From Now Until 2050.

[145] E.g. LeBeau et al. "Greater sage-grouse male lek counts relative to a wind energy development"; LeBeau et al., "Greater sage-grouse habitat selection, survival, and wind energy infrastructure."

[146] See Bureau of Land Management, BLM National NEPA Register: Utility-Scale Solar Energy Development PEIS/RMPA, accessed May 6, 2024. https://eplanning.blm.gov/eplanning-ui/project/2022371/510

determination must then be applied to the Solar PEIS planning process as it is essential that these planning processes stay aligned. This approach is consistent with the 2015 GRSG RMPAs and is anticipated by the Solar PEIS, which found more than adequate land for PV solar development outside of PHMA.

This is important because the impacts of PV solar development on GRSG are significant. Although PV solar facilities are low-lying (except for meteorological towers), unlike wind turbines, they nonetheless have impacts upon GRSG. Although best practices are currently lacking, PV solar facility management typically includes vegetation removal, grading of the site, fencing, etc., all of which adversely impact and may even prevent GRSG utilization of the site. Accordingly, we support the exclusion of PV solar energy facilities from important GRSG habitat. In particular, PHMA should be closed to PV solar, as under alternative 4 in the draft EIS.

We also note that, in the case of PV solar energy, recent research and planning documents make it clear that there is more than enough BLM-managed land with solar energy potential to site expected solar energy development outside of important GRSG habitat. As part of the Solar PEIS planning process, the BLM explained that under its RFDS, the agency expects to site PV solar developments on approximately 700,000 acres of BLM-managed land over the next 20 years.[147] The agency concluded that this land could be identified utilizing only land that was already disturbed and in close proximity (10 miles) to existing or planned transmission corridors, while respecting resource-based exclusions such as for GRSG. For the most part, such disturbed lands do not overlap GRSG habitat at all. To the extent that some important GRSG GHMA in places such as Wyoming was incorrectly identified as disturbed land in the Solar PEIS, many of the undersigned organizations submitted comments asking the BLM to correct that mapping. If that is done, the Solar PEIS will exclude PV solar development from both PHMA and important GHMA, achieving a level of GRSG protection consistent with that proposed under alternative 4 in the draft EIS while allowing PV solar development in disturbed areas within GHMA.

C. Transmission lines and GRSG.

One of the largest current challenges for renewable energy projects is delivering the electricity they produce to market. To facilitate this, the BLM has designated, and is currently revising,[148] 5,000 miles of energy corridors under Section 368(a) of the Energy Policy Act of 2005.[149] These corridors, some of which have already been developed with transmission lines and others of which are sites for proposed transmission lines, have significant effects on local wildlife resources. The towers that support power lines are tall structures that GRSG will avoid at a distance of 4 miles or more,[150] the conductor is a source of potential bird collisions (unless properly marked), and the corridor itself introduces a linear feature that fragments and bisects

[147] Bureau of Land Management, Draft Programmatic Environmental Impact Statement for Utility-Scale Solar Energy Development, Document #DOI-BLM-HQ-3000-2023-0001-RMP-EIS, accessed May 6, 2024 (2-3). https://eplanning.blm.gov/public_projects/2022371/200538533/20102762/251002762/2023%20Draft%20Solar%20PEIS%20Volume%201%201-10-2024_508compliant.pdf

[148] See Bureau of Land Management, West-wide Energy Corridor Information Center, accessed June 6, 2024, https://corridoreis.anl.gov/.

[149] Bureau of Land Management, West-Wide Energy Corridors, accessed May 6, 2024. https://www.blm.gov/energy-corridors

[150] See Manier et al., Conservation buffer distance estimates for Greater Sage-Grouse—A review.

habitat. Depending on management, areas around transmission line towers and sometimes between them may be kept clear of vegetation, may be locations for surface roads, and may become vectors for GRSG predators, invasive species, and wildfires.

The draft EIS addresses transmission lines as major ROWs (along with large pipelines). PHMA would be managed as avoidance areas under both alternatives 4 and 5, while GHMA would be open with minimization and compensatory mitigation criteria. For both PHMA and GHMA, alternative 4 would provide additional protections for breeding, nesting, and other high-value/limiting seasonal habitat, while alternative 5 would provide only compensatory mitigation.

We urge the BLM to adopt in the final EIS and RMPAs/RODs an approach *at least* as protective as alternative 4. Ideally, the BLM should use the existing and planned transmission lines recently identified in the Solar PEIS process to identify those corridors where transmission lines can be collocated to minimize habitat fragmentation and associated impacts. New transmission lines should not be authorized outside of utility corridors, nor should new corridors be placed within PHMA. For those locations where transmission lines already exist, or where valid existing rights necessitate construction of new gen-ties in GRSG habitat, the BLM should apply the avoidance criteria and additional protections for breeding, nesting, and other high-value/limiting seasonal habitat proposed under alternative 4.

X. The BLM must manage protected wild horses and burros to limit impacts on GRSG habitat.

Wild horses and burros are protected on public lands by the Wild and Free-Roaming Horses and Burros Act of 1971.[151] Free-roaming horses and burros are nonnative livestock that lack natural predators and can have detrimental impacts on native ecosystems and wildlife habitat. Native shrubs, grasses, forbs, and riparian areas are not adapted to the intense pressures of modern equine herds and are subject to degradation, soil erosion, and a loss of biodiversity from those herds that exceed the carrying capacity for certain ecosystems.

Wildlife habitat is declining in quality across many areas in the West due to the explosion of wild horse and burro populations, impacts that are being exacerbated by warmer and drier conditions as well as nonnative invasive plants. GRSG leks are particularly vulnerable to pressure from wild horses and burros, which disrupt lekking activity at greater levels than native ungulates.[152]

The BLM is charged with management of wild horses and burros, and to facilitate this the agency sets AMLs, which represent the number of horses and burros that can coexist with other

[151] Wild and Free-Roaming Horses and Burros Act of 1971, Pub. L. No. 92-195, 85 Stat. 649 (1971).

[152] E.g. Diana A. Muñoz, Peter S. Coates, and Mark A. Ricca, "Free-roaming horses disrupt greater sage-grouse lekking activity in the Great Basin," *Journal of Arid Environments* 184 (2021): 104304. https://eplanning.blm.gov/public_projects/2012689/200480865/20045030/250051218/Munoz%20et%20al.%202021.pdf

resource uses on the same land.[153] As of the BLM's 2023 estimates, the horse and burro population across the range was 73,520, close to three times the "high" AML of 26,785.[154] Although every state but Idaho exceeded its high AML, the problem was by far the most acute in Nevada, where there were 38,023 horses and burros, over half the total, exceeding the "high" AML for the state of 12,811 by more than a factor of three.[155]

Persistent overpopulations of wild horses and burros adversely affect GRSG. Overuse by wild horses and burros reduces vegetation, causes habitat fragmentation, and can open rangeland up to invasive weeds.[156] Analysis recently completed by Coates et al. 2021 concludes that populations in excess of AMLs are associated with GRSG declines.[157] For every 50% increase in horse abundance over an AML, GRSG abundance is likely to decline by 2.6%.[158] When horse populations are double the established AML, there is a 76% probability of GRSG decline.[159] In contrast, "in areas where horse abundance was at or below currently established AMLs, impacts to sage-grouse population trends were consistent with areas where horses are absent on the landscape altogether. This suggests that the maximum AMLs are effective at neutralizing the adverse impacts that horse populations have on sage-grouse populations and that free-roaming horses have the potential to coexist with native wildlife under the right management approach."[160]

Any of the approaches proposed in the draft EIS, if successfully implemented, would address this issue, including the alternative 5 approach, management of wild horses and burros within the full range of AMLs. We support continued inclusion of GRSG habitat objectives in wild horse and burro management, adaptive management of wild horse and burro populations, and changes to AMLs as necessary.[161]

We recognize that managing wild horses and burros is challenging, and we urge the BLM to work with state governments, other federal agencies, political leaders, and other partners to find solutions that will lead to effective management of wild horses and burros and durable conservation for GRSG populations.

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[153] E.g. Peter S. Coates, Shawn T. O'Neil, Diana A. Muñoz, Ian A. Dwight, and John C. Tull, "Sage-Grouse Population Dynamics are Adversely Affected by Overabundant Feral Horses," *Journal of Wildlife Management* 85(6) (2021): 1132-1149. https://wildlife.onlinelibrary.wiley.com/doi/10.1002/jwmg.22089

[154] Bureau of Land Management, Herd Area and Herd Management Area Statistics, March 1, 2024. https://www.blm.gov/sites/default/files/docs/2024-03/2024_HMA-HA_PopStats_2-29-2024_COMBINED_Clean_FINAL_web.pdf

[155] Bureau of Land Management, Herd Area and Herd Management Area Statistics.

[156] Coates et al., "Sage-Grouse Population Dynamics are Adversely Affected by Overabundant Feral Horses."

[157] Coates et al., "Sage-Grouse Population Dynamics are Adversely Affected by Overabundant Feral Horses."

[158] Coates et al., "Sage-Grouse Population Dynamics are Adversely Affected by Overabundant Feral Horses."

[159] U.S. Geological Survey, "When Unchecked, Free-Roaming Horse Populations Threaten Greater Sage-Grouse," press release, August 2, 2021. https://www.usgs.gov/news/national-news-release/when-unchecked-free-roaming-horse-populations-threaten-greater-sage

[160] U.S. Geological Survey, "When Unchecked, Free-Roaming Horse Populations Threaten Greater Sage-Grouse."

[161] Draft EIS, 2-113 through 2-116.

XI. The BLM must manage livestock grazing to conserve GRSG and meet rangeland health objectives.

Livestock grazing can have considerable impacts on GRSG, both beneficial and deleterious. Achieving positive outcomes depends on careful consideration of numerous factors. For example, researchers from the U.S. Geological Survey, Colorado State University, and Utah State University found that higher levels of grazing early in the growing season (before peak plant productivity) were associated with GRSG population declines, but similar high grazing levels later in the season corresponded with GRSG population increases.[162] In moister areas with greater plant productivity, in contrast, GRSG benefitted from intermediate grazing levels *early* in the season, and *not* from higher levels of grazing, even later in the season.[163]

Similarly, Richardson et al. 2023 found that grazing timing and intensity significantly impacts insect and plant availability, including species that provide GRSG with vital food sources.[164] The study concluded that grazing intensity was not necessarily detrimental to insect abundance: while beetle, butterfly, and ant populations shifted in various ways based on moisture levels, only beetles were impacted by grazing intensity, and their numbers *increased* with increased grazing pressure.[165] Overall, we now have over a decade of data and experience that can be applied to grazing management to secure positive outcomes for GRSG populations.[166]

Deleterious effects of poorly-managed grazing include increased heterogeneity in vegetative communities, habitat fragmentation, and increased invasive grasses.[167] The BLM must manage its grazing program, which encompasses 21,000 separate allotments across 155 million acres,[168] to minimize these deleterious impacts. Its chief tool for doing so are land health standards (LHS),

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[162] See U.S. Geological Survey, "Livestock grazing effects on sage-grouse," press release, March 21, 2017. https://www.usgs.gov/news/national-news-release/livestock-grazing-effects-sage-grouse-study-identifies-options-sustain-0

[163] U.S. Geological Survey, "Livestock grazing effects on sage-grouse."

[164] William Richardson, Tamzen K. Stringham, Andrew B. Nuss, Brian Morra, and Keirith A. Snyder, "Shifts in sage-grouse arthropod food sources across grazing and environmental gradients in upland meadow communities," *Journal of Environmental Management* 348 (2023): 119261. https://www.sciencedirect.com/science/article/pii/S0301479723020492?via%3Dihub

[165] Richardson et al., "Shifts in sage-grouse arthropod food sources across grazing and environmental gradients in upland meadow communities."

[166] See, e.g., Lorelle Berkeley, Joseph Smith, and Mark Szczypinski, Evaluating Sage-Grouse and Habitat Responses to Sage-Grouse Friendly Livestock Grazing Strategies: 3-yr Preliminary Findings, September 10, 2013. https://www.nrcs.usda.gov/publications/ceap-wildlife-2014-SageGrouse-response-LivestockGrazingStrategies.pdf; Lorelle Berkeley and Mark Szczypinski, Evaluation of Grazing Treatments Within the Sage grouse Initiative Program on Greater Sage grouse Habitat and Population Dynamics in central Montana, October 24, 2017. https://ecos.fws.gov/ServCat/DownloadFile/163619

[167] E.g. Kyle A. Cutting, Emma C. Grusing, David Messmer, Sean R. Schroff, James A. Waxe, Aaron O'Harra, and Bok F. Sowell, "Heterogenous resources across sagebrush type are associated with components of offspring fitness in an avian habitat specialist," *Biological Conservation* 293 (2024): 110552.

[168] Bureau of Land Management, Livestock Grazing on Public Lands, accessed May 7, 2024. https://www.blm.gov/programs/natural-resources/rangelands-and-grazing/livestock-grazing; Public Employees for Environmental Responsibility, Rangeland Health and BLM Grazing Programs Factsheet, accessed May 7, 2024. https://peer.org/wp-content/uploads/2022/03/03-14-2022-Rangeland-Fact-Sheet.pdf

which are designed to capture the regulatory fundamentals of rangeland health[169] and describe the conditions on the landscape that demonstrate health.[170]

Historically, the BLM has struggled to meet its obligations under the grazing program. Although 108 million acres have been assessed under the LHS, nearly 41 million acres have not been. 50% of assessed acres are not meeting LHS. In 72% of these, livestock grazing was a significant cause for not meeting LHS.[171] In Nevada, where rangeland resources are also under immense pressure from wild horses and burros, no allotments met LHS as of 2020, with livestock grazing identified as a contributing factor in approximately half of them.[172] However, grazing has been both a neutral and beneficial tool to help BLM reach its LHS obligations under the grazing program. In addition to historically well-managed grazing, outcome-based grazing, a new approach adopted in 2017 and in the pilot phase, has the potential to improve grazing management and rangeland health outcomes.[173]

In the draft EIS, the BLM describes two different approaches to grazing management for GRSG, neither of which are satisfactory. Under alternative 3, all GRSG HMAs would be closed to grazing. This approach is unnecessarily cautious and could negatively impact GRSG, because grazing can be an important rangeland management tool that can be strategically used to benefit GRSG (and other wildlife) provided that appropriate purpose, location, timing, duration, and intensity of grazing are taken into consideration.

Under alternatives 4 and 5, the BLM would make only minor adjustments to grazing leases, land health assessments (LHAs), and LHS in order to restore, maintain, or enhance GRSG habitat. Specific range-management actions would pertain to timing, intensity, duration, and frequency of grazing; application of the HAF to LHAs; specific adaptive management thresholds and responses to improve GRSG habitat suitability (required under alternative 4, optional under alternative 5); removal or modification of harmful range improvements; improved livestock management through technologies such as virtual fencing; removal of existing fencing; and the option of retiring grazing permits or leases when voluntarily relinquished.[174]

All of these tools identified in alternatives 4 and 5 are worthwhile and, if fully implemented, could improve rangeland management for GRSG while moving more BLM-managed rangelands towards compliance with LHS. We support responsible grazing within both PHMA and GHMA, provided that appropriate management actions are required. Ultimately, improvements to public land livestock grazing will only occur with the timely completion of LHAs, which requires appropriate staffing and implementation of the improvements made to the process by the Public Lands Rule, which are outside the scope of these plan amendments. For this reason, we support the approach taken in alternatives 4 and 5, rather than alternative 3. However, there are ample

[169] These are watersheds, ecological processes, water quality, and habitats. See 43 C.F.R. § 4180.1
[170] See Bureau of Land Management, Manual H-4180-1 – Randeland Health Standards, January 19, 2001 https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_h4180-1.pdf
[171] Public Employees for Environmental Responsibility, Rangeland Health and BLM Grazing Programs Factsheet.
[172] Public Employees for Environmental Responsibility, Interactive BLM Rangeland Health Geospatial Data Portal, accessed May 7, 2024. https://mangomap.com/peer/maps/126421/blm-rangeland-health-status-2020-the-significance-of-livestock-grazing-on-public-lands?preview=true#
[173] See Bureau of Land Management, Livestock Grazing on Public Lands.
[174] See draft EIS, 2-103 through 2-112. The draft EIS explains each of these approaches in much more detail.

opportunities for the BLM to improve its grazing program beyond those identified in the draft EIS. Based on the best available science,[175] we suggest that the following approaches be considered when managing grazing in GRSG habitat:

- Targeted grazing, which could include seasonal use restrictions as well as limits on timing, frequency, duration, distribution, or intensity;
- Structural range improvements, which could include protection for undisturbed (not currently developed), naturally occurring springs and seeps; protective design features for artificial water sources; and targeted fence removal;
- Allowing qualified permittees or lessees to voluntarily relinquish grazing permits or leases;
- Giving priority to LHAs in GRSG habitat, resulting in identification and implementation of appropriate actions where current livestock grazing management has been identified as a causal factor in not meeting LHS; and
- Managing grazing in GRSG habitat to maintain important habitat features, such as residual forage for hiding cover (including seasonal limits or closures), suitable sagebrush cover and height, and cool season grasses, while controlling invasive annual grasses such as cheatgrass, ventenata, and medusahead.

All of the above should take into account the current and desired conditions of the landscape.

XII. Conclusion.

This planning process – the third for GRSG since 2015 – comes at an incredibly important time. The 2015 RMPAs, which succeeded in the important goal of securing "not warranted" status for

[175] See K. A. Cutting, et al., "Heterogenous resources across sagebrush type are associated with components of offspring fitness in an avian habitat specialist"; C. P. Kirol and B. C. Fedy, "Using individual-based habitat selection analyses to understand the nuances of habitat use in an anthropogenic landscape: a case study using greater sage-grouse trying to raise young in an oil and gas field," *Wildlife Biology* 1–17 (2023); W. Richardson et al., "Shifts in sage-grouse arthropod food sources across grazing and environmental gradients in upland meadow communities"; K. A. Cutting, J. J. Rotella, S. R. Schroff, M. R. Frisina, J. A. Waxe, E. Nunlist, and B. F. Sowell, "Maladaptive nest-site selection by a sagebrush dependent species in a grazing-modified landscape," *Journal of Environmental Management* 236 (2019): 622–30; L. L. Correll, R. M. Burton, J. D. Scasta, and J. L. Beck, Landowner guide to sage-grouse conservation in Wyoming: a practical guide for landowners and managers, Extension Bulletin B-1295 (University of Wyoming Extension, 2017); A. P. Monroe, C. L. Aldridge, T. J. Assal, K. E. Veblen, D. A. Pyke, and M. L. Casazza, "Patterns in Greater Sage-grouse population dynamics correspond with public grazing records at broad scales," *Ecological Applications* 27(4) (2017): 1096–1107; C. S. Boyd, J. L. Beck, and J. A. Tanaka, "Livestock grazing and sage-grouse habitat: impacts and opportunities," *Journal of Rangeland Applications* 1 (2014): 58–77; E. J. Blomberg, S. R. Poulson, J. S. Sedinger, and D. Gibson, "Prefledging diet is correlated with individual growth in Greater Sage-Grouse (*Centrocercus urophasianus*)," *The Auk* 130 (2013): 715–24; J. W. Connelly, T. E. Rinkes, and C. E. Braun, "Characteristics of greater sage-grouse habitats: a landscape species at micro- and macroscales," *Studies in Avian Biology* 38 (2011): 69–83; S. T. Knick, S. E. Hanser, R. F. Miller, D. A. Pyke, M. J. Wisdom, S. P. Finn, E. T. Rinkes, and C. J. Henny, "Ecological influence and pathways of land use in sagebrush," *Studies in Avian Biology* 38 (2011): 203–51; D. E. Naugle, C. L. Aldridge, B. L. Walker, T. E. Cornish, B. J. Moynahan, M. J. Holloran, K. Brown, G. D. Johnson, E. T. Schmidtmann, R. T. Mayer, C. Y. Kato, M. R. Matchett, T. J. Christiansen, W. E. Cook, T. Creekmore, R. D. Falise, E. T. Rinkes, and M. S. Boyce, "West Nile virus: pending crisis for greater sage-grouse," *Ecology Letters* 7 (2004): 704–13.

GRSG under the ESA, were never fully implemented. The BLM's subsequent attempt to open the plans and make them more agreeable to states did not withstand judicial scrutiny. As the BLM stated in its 2015-2020 Rangewide Monitoring Report[176]:

> The results presented in this report, in combination with the U.S. Geological Survey's rangewide population monitoring report (Coates et al. 2021) and sagebrush conservation strategy (Remington et al. 2021), emphasize the urgent need to expand ongoing efforts to conserve currently functional habitat and restore currently degraded habitat.

Thus, it is our sincere hope that the BLM can now develop an approach that successfully balances GRSG conservation with other uses across the 69 million acres of GRSG habitat within the planning area. By doing so, the BLM will meet its multiple use obligations and create a durable approach that can be fully implemented over the coming years and decades.

Because additional legal controversy is likely, it is essential that the BLM's environmental review be thorough and fully comply with NEPA, FLPMA, and all other statutory and regulatory obligations of the agency. The undersigned organizations are dedicated to the careful and consistent application of the best available science in all wildlife and land management decisions. We thank you for your work on behalf of this species, and for the opportunity to submit these comments to help guide the BLM as it moves towards a final EIS and associated RMPAs/RODs.

Sincerely,

Sara Brodnax
Director, Public Lands Policy
National Audubon Society
sara.brodnax@audubon.org

Bailey Brennan
Public Lands Counsel
National Wildlife Federation
brennanb@nwf.org

Kristal Stoner
Executive Director
Audubon Great Plains (NE, ND, SD)
kristal.stoner@audubon.org

Ted Koch
Executive Director
North American Grouse Partnership
ted@grousepartners.org

Alison Holloran
Executive Director
Audubon Rockies (CO, UT, WY)
alison.holloran@audubon.org

John Bradley
Executive Director
North Dakota Wildlife Federation
jbradley.ndwf@gmail.com

[176] Herren et al., Greater sage-grouse plan implementation: Rangewide monitoring report for 2015–2020, 51.

Mike Lynes
Director of Public Policy
Audubon California
mike.lynes@audubon.org

Suzanne O'Neill
Executive Director
Colorado Wildlife Federation
cwfed@coloradowildlife.org

Luke Schafer
West Slope Director
Conservation Colorado
luke@conservationco.org

Kyle Makie
North Idaho Field Representative
Idaho Wildlife Federation
kmaki@idahowildlife.org

Larry Berrin
Executive Director
Montana Audubon
lberrin@mtaudubon.org

Frank Szollosi
Director, Public Lands Policy
Montana Wildlife Federation
frank@mtwf.org

Bobby McEnaney
Director, Land Conservation
Natural Resources Defense Council
bmcenaney@nrdc.org

Russell Kuhlman
Executive Director
Nevada Wildlife Federation
Kuhlman@nvwf.org

Chase Huntley
Vice President for Strategy and Policy
The Wilderness Society
chase_huntley@tws.org

Brad Prettyman
Board Chair
Utah Wildlife Federation
tbprettyman@gmail.com

Aubrey Bertram
Attorney, Climate & Energy Program Director
Wild Montana
abertram@wildmontana.org

Meghan Riley
Wildlife Program Manager
Wyoming Outdoor Council
meghan@wyomingoutdoorcouncil.org

Nat Paterson
Policy Coordinator
Wyoming Wildlife Federation
npaterson@wyomingwildlife.org

555 Seventeenth Street ● Suite 2400 ● Denver, Colorado 80202 ● Office 303-298-1000 ● Fax 303-299-1518

SUBMITTED VIA BLM E-PLANNING WEBSITE

June 13, 2024

Mr. Sharif Branham
Assistant Director of Resources and Planning
United States Department of the Interior,
Bureau of Land Management
1849 C Street, N.W.
Washington, DC 20240

RE: Comments on the Bureau of Land Management's Greater Sage-Grouse Draft Resource Management Plan and Environmental Impact Statement

Dear Assistant Director Branham:

Anschutz Exploration Corporation ("Anschutz") appreciates the opportunity to submit comments on the Bureau of Land Management's ("BLM") Greater Sage-Grouse Draft Resource Management Plan Amendment ("RMP") and Draft Environmental Impact Statement ("EIS"). Anschutz recognizes that the RMP Amendment was a massive and years-long, resource-intensive, undertaking. It admires the agency's effort.

Anschutz also commends BLM's selection of six separate alternatives for in-depth evaluation in the EIS. From the evaluated alternatives, Anschutz generally supports the agency's decision to select Alternative 5 as the preferred one—it rightly attempts to balance sage-grouse conservation with other public land uses. As explained below, however, Anschutz requests that BLM evaluate another, more development-friendly alternative. Even if the agency does not consider this additional alternative, Anschutz nonetheless urges BLM—as elaborated below—to make certain changes to preferred Alternative 5. Finally, under no circumstances should BLM in the Final RMP Amendment and EIS select development-limiting alternatives—such as Alternatives 3 or 6—that unlawfully prioritize conservation to the detriment of the Nation's energy independence, states' economies, operators' valid existing rights, and the American people.

Anschutz requests that BLM consider all its comments, all comments submitted by other members of the oil-and-gas industry, and all comments from communities whose economies depend on the oil-and-gas industry, before issuing the Final RMP Amendment and EIS.

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I. INTRODUCTION

A. BLM's Proposed Greater Sage-Grouse Resource Management Plan Amendment.

On March 15, 2024, BLM published the Draft RMP Amendment and Draft EIS for the management of greater sage-grouse (sometimes referred to as "GRSG") habitats in the West. In the proposed RMP Amendment, BLM considers amending 77 BLM RMPs to adjust management of up to 69 million acres of sage-grouse habitats in portions of California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, Utah, and Wyoming. In the Draft EIS, BLM describes and evaluates six alternatives for managing GRSG habitats on BLM-administered lands:

- Alternative 1 largely represents a re-adoption of BLM's habitat-management-area boundaries, goals, objectives, and actions from the 2015 RMP Amendments. Due to the U.S. District Court for the District of Idaho's preliminary injunction preventing implementation of BLM's subsequent, 2019 Amendments, this alternative reflects how BLM, in lieu of using those enjoined amendments from five years ago, is currently managing sage-grouse habitats on public lands. This alternative would thus be a de facto continuation of BLM's existing management approach.

- Alternative 2, the "No Action" alternative, would follow BLM's 2019 RMP Amendments (except for management in the Montana/Dakotas region, whose approach was not amended in 2019). Although the U.S. District Court for the District of Idaho issued a preliminary injunction preventing BLM from implementing the 2019 Amendments, the court did not vacate those Amendments or their associated Records of Decision. This alternative, therefore, reflects management decisions from BLM's most-recently approved RMP. This alternative is similar to Alternative 1 but includes different mitigation mechanisms, including more options for BLM to use "compensatory mitigation" measures.

- Alternative 3 represents the alternative with the most restrictions on resource use. All habitat management areas would be managed as Primary Habitat Management Areas or "PHMAs." BLM would close PHMA to new mineral leasing and right-of-way ("ROW") permits (outside of designated corridors) and would recommend withdrawal of PHMAs from location and entry under the Mining Law of 1872. Under Alternative 3, BLM would also designate 11,139,472 acres of public lands as Areas of Critical Environmental Concern or "ACECs" specific to GRSG management.

- Alternative 4 would update the habitat-management-area boundaries and associated management decisions based on new information that has become available since the 2015 and 2019 planning efforts. Like it has done for Alternatives 1 and 2, BLM has updated the areas subject to management under Alternative 4 to reflect the science and experience of the years since 2015. Under this alternative, BLM is also proposing to require that all PHMA in Wyoming be managed with no-surface-occupancy ("NSO") stipulations for new oil and gas leases.

- Alternative 5 is the "agency-preferred" alternative. BLM states that this alternative will balance GRSG conservation with other public land uses. Alternative 5 contemplates relatively fewer restrictions on resource development and provides more compensatory mitigation options to offset impacts to sage-grouse habitats.

- Alternative 6 is the same as Alternative 5 with regard to habitat management areas. But Alternative 6 adds ACECs. ACEC boundaries (and acreage) would reflect those in Alternative 3, but BLM would manage ACECs with fewer development restrictions compared to Alternative 3—though the management generally would be more restrictive than management of the remainder of PHMAs under this alternative.

Oil-and-gas production on federal public lands makes up approximately ten percent of domestically produced oil and eight percent of domestically produced natural gas. Global and domestic energy demand from all sources is expected to increase significantly in the coming years. Responsible development of energy resources on federal lands is critical to meet the growing demand for affordable, reliable energy. Despite this impending rise in energy demand, BLM's Alternatives 3 and 6 exclude millions of acres of public lands from oil-and-gas and renewable energy development. BLM, therefore, wisely did not consider either of these alternatives "preferred."

Although BLM says that it attempts in Alternative 5 to "balanc[e] resource uses by managing multiple use," as we discuss below, that alternative remains biased against oil-and-gas development. *See* Draft EIS at 2-6. Anschutz, therefore, requests BLM to consider a more development-friendly alternative focused on thoughtfully increasing mineral development. Even if it were true—as BLM claims—that increasing development would necessarily harm GRSG, evaluation of an alternative focused on increasing development would nonetheless help the agency understand the degree and magnitude of such harm, rather than simply guessing. Subjecting a development-focused alternative to review would ultimately help BLM hone in on a decision that achieves optimal balance between mineral development and sage-grouse conservation.

Energy production on federal lands is already subject to seemingly endless permitting and regulatory burdens. For that reason, Anschutz welcomes BLM's decision to select Alternative 5—the alternative that allows the most resource development among the evaluated alternatives. Nonetheless, several aspects of BLM's proposed RMP and Draft EIS are ill-informed and unworkable, and will further hinder fossil-fuel and renewable energy development projects. Even if BLM does not analyze another development-friendly alternative, Anschutz urges BLM to make certain changes to its existing proposal, as discussed below.

B. BLM's Proposed Revisions Affect Anschutz's Interests.

Anschutz is an independent oil-and-gas exploration and development company that operates in three Western States: Colorado, Utah, and Wyoming. Since its founding decades ago, Anschutz has focused on responsible development of oil-and-gas resources in the U.S. Rockies. It is actively involved in an oil-and-gas development program that includes and depends on federal leases throughout the region. The company's experienced operations team has drilled and completed hundreds of oil-and-gas wells while applying advanced technologies and responsible practices to ensure that the company operates at the highest ethical and environmental standards. Anschutz also contributes to the communities in which it operates by providing well-paying jobs and investing in the social and economic wellbeing of its employees, its contractors, and their families.

Anschutz has a substantial and deep-seated interest in BLM's proposed revisions to the Sage-Grouse Resource Management Plan because Anschutz holds federal leases covering thousands of acres in the GRSG habitat planning areas that span Colorado, Utah, and Wyoming and intends to acquire more leases in those three states. BLM's management of sage-grouse habitat has the

potential to impede Anschutz's (and other companies') development of existing leases. BLM's decision could also hinder Anschutz's lease-acquisition plans: lands adjacent to or near its existing leases could be unavailable for oil-and-gas development or subject to burdensome and unnecessary NSO stipulations or right-of-way ("ROW") restrictions because of BLM's management decisions.

Thus, BLM's changes to the Colorado, Utah, and Wyoming RMPs—especially the proposed withdrawal of lands from mineral development, restrictions on ROW grants, ACEC designations, and implementation of NSO and other onerous conditions under Alternatives 3, 4, and 6—will directly and adversely impact Anschutz.

II. EXECUTIVE SUMMARY

In managing GRSG and their habitat, including sage-grouse on federal lands, BLM must cooperate with and respect the various states' rights to manage wildlife within their respective borders, including on federal lands. Moreover, BLM must respect and not interfere with valid existing rights, including existing oil-and-gas lease rights, when selecting prescriptive-management tools.

BLM's preferred alternative—Alternative 5—will allow the agency to best manage sage-grouse habitats in coordination and cooperation with state wildlife agencies in consideration of individual states' existing sage-grouse habitat conservation plans ("HCPs") and policies. And, for that reason, Anschutz agrees with BLM that Alternative 5 appropriately balances locally relevant decisions with rangewide GRSG conservation goals.

Anschutz also supports Alternative 5 because it strikes a balance between resource use and sage-grouse habitat designation, in compliance with the Federal Land Policy and Management Act's ("FLPMA") multiple-use mandate and BLM's statutorily imposed obligations to promote mineral development on public lands. Anschutz appreciates many aspects of Alternative 5, including (to highlight a few), Alternative 5's:

- Allowance of leasing within a PHMA with appropriate NSO or other stipulations, to the extent such stipulations are not inconsistent with a lessee's valid existing rights;

- Reliance on a "no net habitat loss" mitigation approach (i.e., full restoration of functional habitats or enhancement of habitats to offset any loss of habitat capacity in impacted areas) because this approach complies with FLPMA and is more sensible than BLM's former "net conservation gain" approach; and

- Authorization of BLM officials to potentially approve projects that exceed disturbance caps if certain criteria are met.

At the same time, however, Anschutz believes that Alternative 5 can be improved, and suggests some changes. Most importantly, Anschutz urges BLM to rethink and ultimately abandon its plans to rely on "the Targeted Annual Warning System procedures"—better known as TAWS—for identifying irregularities in GRSG habitat as one of BLM's proposed adaptive-management techniques. Anschutz generally supports BLM's decision to adaptively manage public lands. But TAWS has been universally criticized as flawed and unreliable. BLM must find a more-reliable tool.

Last, Anschutz vigorously opposes BLM's Alternatives 3, 4 and 6, and opposes the other evaluated alternatives to the extent that they would unnecessarily restrict multiple uses of public lands, including for mineral development. Alternatives 3 and 6, by making PHMAs and millions of acres of ACECs off-limits to mineral development and ROWs, violate BLM's statutory obligations and unlawfully interfere with valid existing rights. Similarly, under Alternative 4, BLM proposes to require that all PHMA in Wyoming be managed with NSO stipulations for new oil and gas leases. The State of Wyoming specifically opposed Alternative 4 as being inconsistent with the Wyoming Governor's GRSG executive order and preferred Alternative 5, as well as Alternative 2, as most aligned with the state's fluid mineral leasing and development objectives. Alternatives 3, 4, and 6 also harm states, local communities, and the people who rely on the economic benefits derived from the multiple uses of our public lands.

III. COMMENTS

A. COMMENTS ON BLM'S AUTHORITY TO MANAGE SAGE-GROUSE AND THEIR HABITAT

1. BLM's Management of Sage-Grouse on Federal Lands Must Respect and Be Consistent with States' Wildlife Management Authorities.

In FLPMA, 43 U.S.C. §1701 *et seq*., Congress "directed that non-wilderness BLM lands be managed by the Secretary [of the Interior] under principles of multiple use and sustained yield, and for both wilderness and non-wilderness lands explicitly recognized and reaffirmed the primary authority and responsibility of the States for management of fish and resident wildlife on such lands." 43 C.F.R. § 24.4. As the D.C. Circuit explained, in enacting FLPMA, Congress "carefully and explicitly ... assigned the states the primary responsibility for the management of wildlife programs within their boundaries." *Def. of Wildlife v. Andrus*, 627 F.2d 1238, 1248 (D.C. Cir. 1980).

Although Congress may preempt state prerogatives on federal lands via the Property Clause, it elected not to do so when it drafted FLPMA. *Id*.; *see* U.S. Const., art. IV, § 3, cl. 2. Specifically, "'nothing' in the FLPMA 'shall be construed as ... enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife.'" *Utah Native Plant Soc'y v. U.S. Forest Serv*., 923 F.3d 860, 868 (10th Cir. 2019) (quoting 43 U.S.C. §§ 1701(a)(8), 1732(b)); *see also Carden v. Kelly*, 175 F. Supp. 2d 1318, 1324 (D. Wyo. 2001) (FLPMA is not "a limitation … upon the police power of the respective States.") (quoting 43 U.S.C. § 1701(g)(6))). Thus, it is unquestioned—and the Secretary has acknowledged this in its codified Fish and Wildlife Policy—that "the States possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on Federal lands within a State." 43 C.F.R. § 24.3(a)-(b); *see also Kleppe v. New Mexico*, 426 U.S. 529, 545 (1976).

"Congress has charged the Secretary of the Interior with responsibilities for the management of certain fish and wildlife resources, e.g., endangered and threatened species, migratory birds, [and] certain marine mammals …." 43 C.F.R. § 24.3(c). "However, even in these specific instances, with the limited exception of marine mammals, *State jurisdiction remains concurrent with Federal authority*." *Id.* (emphasis added).

BLM manages 245 million surface acres, or one-tenth of America's land, and more than 700 million acres of subsurface mineral estate.[1] BLM-administered surface supports significant and diverse populations of fish and wildlife. Nonetheless, BLM's "authority to manage lands for fish and wildlife values is *not a preemption of State jurisdiction over fish and wildlife*." *Id.* § 24.4(c) (emphasis added).

Moreover, although BLM "has custody of the land itself and the habitat upon which fish and resident wildlife are dependent" and is responsible for the "[m]anagement of the habitat," "Congress … has directed the Secretary of the Interior *to cooperate with the States* in developing programs on certain public lands, including those administered by BLM … for the conservation and rehabilitation of fish and wildlife including specific habitat improvement projects." *Id.* § 24.4(d) (emphasis added).

To comply with Congress's mandate that the Department of the Interior cooperate with state governments, as explicitly expressed through FLPMA's instruction that BLM coordinate planning efforts with states, BLM accepted "input on the alternatives" evaluated in the Draft EIS from the affected states "as cooperating agencies." Draft EIS at I-12. Idaho and Wyoming submitted suggested language specific to their respective states for consideration. *Id.* Wyoming also expressed concerns related to Alternative 4, in which BLM proposes to manage all PHMAs with NSO stipulations for fluid minerals, because such management restrictions would be "inconsistent with the Wyoming Governor's GRSG executive order." *Id.* Some states have also "expressed concerns related to the proposed adaptive-management approach in Alternatives [3 through 6], preferring the state-specific approaches of Alternative[s] 1 and 2, or proposed that any population-threshold decision-making be left entirely to state wildlife-management agencies with no identified metric used to monitor habitat concerns through population trends." *Id.* at I-13.

BLM should give the state's preferences special weight. BLM (a) should follow the states' lead on state-specific management strategies; (b) ensure that existing state executive orders, plans, policies, programs, and the like are appropriately considered when evaluating a need, if any, for additional management prescriptions; and (c) respect states' primary authority and responsibility for managing sage-grouse populations within their borders. Specifically, BLM should afford appropriate weight and consideration to the following state issues:

- **Colorado Greater Sage-Grouse Conservation Plan and the Colorado Package.** Colorado's Plan coordinates sage-grouse conservation efforts throughout the state, building upon the foundation laid by five local plans. The Colorado Package facilitates the conservation of sage-grouse and their habitats by identifying specific measures and strategies to apply in various development and land-use scenarios, including during energy and mineral development. The Colorado Package provides detailed measures for mitigating the impacts of drilling and certain operations on sage-grouse, imposing certain buffers and timing limitations, and directing BLM as the responsible party for enforcing some, but not all, of the measures on federal leases.[2]

[1] BLM, *What We Manage Nationally,* https://www.blm.gov/about/what-we-manage/national.

[2] Colorado Package (Jan. 30, 2013), available at: https://cpw.state.co.us/Documents/WildlifeSpecies/SpeciesOfConcern/GreaterSageGrouse/TheColoradoPackageConsPlan/CH3EnergyandMineralDevelopment.pdf.

- **Utah's Compensatory Mitigation Program.** The Utah Legislature established this program under Administrative Rule (AR) R634-3. It encourages responsible economic development by avoiding and minimizing permanent disturbance within sage-grouse habitat, when possible, and by providing compensatory mitigation resulting in an improvement to or protection of habitat to offset the impacts from permanent disturbance in sage-grouse habitats. Under AR R634-3, permanent disturbance is defined as "a human caused action that results in a loss of sage-grouse [h]abitat for a period of five or more years and includes all areas where the direct effects of the action could be expected to disrupt the common activities of sage-grouse for a period of five years or more." Utah Admin. Code r. 634-3-3(28). Many above-ground activities associated with oil-and-gas operations are not subject to Utah's mitigation requirements because operators restore the "functionality" of the habitat within the five-year time frame. Utah recommends that for every one acre of functional sage-grouse habitat that is permanently disturbed, four acres of functional habitat or corridors be created, restored, and/or preserved. *Id.* r. 634-3-4(1). This ratio accounts for direct and indirect impacts of proposed projects. *Id.* r. 634-3-3(26).

- **Wyoming's Executive Order 2019-3 and Stewardship Habitat Management Areas ("SHMAs").** Sage-grouse habitat has been managed through various iterations of executive orders in Wyoming since 2008, the latest of which was issued in 2019.[3] Through these executive orders, Wyoming has established Core Population Areas, Connectivity Areas, and Winter Concentration Areas that prioritize maintenance and enhancement of GRSG habitats and populations. The executive orders establish stipulations, processes, and a compensatory mitigation framework that, among other things, are designed to achieve conservation goals while respecting valid existing rights. SHMAs are GRSG habitats that are generally characterized by large percentages of private land, existing disturbance and prior and existing rights, and fragmented landscapes that continue to support substantial populations of GRSG. They provide important connections between populations, and are important for maintaining greater sage-grouse populations. Sage-grouse stewardship areas typically do not meet the definition of "Core Population Area," but private landowners can create their own framework for mitigating effects on sage-grouse populations through Habitat Conservation Plans ("HCPs") or Conservation Benefit Agreements ("CBAs") and Candidate Conservation Agreements with Assurances ("CCAAs"), voluntary agreements that provide incentives for non-federal landowners to conserve candidate and other unlisted species likely to become endangered-species candidates in the future. For the length of the agreement, landowners agree to undertake specific activities that address identified threats to the target species.

2. BLM's Management of Sage-Grouse Habitat Cannot Interfere with Valid Existing Rights.

Federal lease interests are vested property rights. BLM cannot take or interfere with them without due process of law. *See W. Watersheds Project v. Haaland*, 22 F.4th 828, 842 (9th Cir. 2022) (an oil-and-gas lease is a "legally protected interest in [a] contract right[] with the federal

[3] Wyo. Exec. Order No. 2019-3, Greater Sage-Grouse Core Area Protection, available at: https://drive.google.com/file/d/1MO0i6GaNWmg52tUJm5SoezpbyhLjc6Jp/view.

government"); *Union Oil Co. of Calif. v. Morton*, 512 F.2d 743, 747 (9th Cir. 1975) (an oil-and-gas "lease does convey a property interest enforceable against the Government").

BLM's Draft EIS states that the RMP Amendment "will recognize valid existing rights." Draft EIS at 1-7; *see also id.* at 2-28 (disturbance caps are subject to valid existing rights). However, in the context of Alternative 3, BLM states that "[v]alid, existing leases may be developed under this alternative," *id.* at 4-23, but then goes on to state that the proposed "[m]anagement restrictions *would only be applied to development associated with valid existing rights* as no new activities would be authorized," *id.* at 4-21 (emphasis added). In other words, lessees of existing leases can attempt to develop their leases under Alternative 3 but, in reality, the management restrictions would make development nearly impossible.

Although BLM states that it will respect valid existing rights, the inability of leaseholders to build access roads, lay pipelines, or construct transmission lines will foreclose economic development arising from those existing lease rights, or at a minimum, significantly increase the cost of developing those existing lease rights. BLM acknowledges as much by explaining:

> Management actions creating ROW exclusion or avoidance areas could prevent or increase the cost of fluid mineral extraction by limiting the available means for transporting fluid minerals to processing facilities and markets. For example, new natural gas pipelines could not be built in an ROW exclusion area. … Identification of ROW avoidance areas, while not creating absolute barriers to use of the area for access roads or pipelines, or for locating surface facilities on federal lands for the purpose of accessing private minerals, could make permissible facilities infeasible for technical or economic reasons.

Id. at 4-82. Anschutz's valid existing lease rights in Colorado and Utah could be directly impacted by BLM's proposed ROW exclusions under Alternative 1. For example, in evaluating the consequences to mineral-resources development in Colorado under Alternative 1, BLM acknowledges that "accessibility to federal minerals with new leases could be significantly reduced or precluded when management of specific areas as ROW exclusion areas would prohibit access roads or pipelines into those areas." Draft EIS at 4-82. Similarly, in Utah under Alternative 1, BLM explains that:

> wherever there is overlap between federal oil and gas leases and the … BLM-administered surface in the decision area that would continue to be managed as ROW avoidance or exclusion under this alternative, the fluid minerals program could be indirectly impacted by the resulting limits on the available means for transporting fluid minerals to processing facilities and markets.

Id. at 4-92. Anschutz therefore urges BLM to abandon any proposed ROW exclusion areas under Alternative 1, and to abandon any proposed alternative by which ROW exclusions either directly or indirectly interfere with valid existing oil-and-gas rights.

B. GENERAL COMMENTS ON BLM'S DRAFT RMP AMENDMENT AND EIS

1. Anschutz Urges BLM to Expand the Purpose and Need Description in the Draft EIS.

BLM explains that the "purpose and need" of the RMP Amendment is to "respond to changing land uses, improve efficiency and effectiveness of GRSG management, provide for consistent conservation based on ecological boundaries, and provide the BLM with locally relevant decisions that accord with rangewide GRSG conservation goals." Draft EIS at ES-1 to ES-2. To begin, Anschutz supports BLM's description of the purpose and need to account for "locally relevant decisions." It is, of course, locally where the impacts of BLM's management decisions are felt most acutely. Local communities have the most to lose from broad and insensible habitat-management decisions. Anschutz thus asks BLM to take this objective seriously. The agency should always carefully consider and internalize the socioeconomic impacts of its plans and policies on local communities before making any habitat-management decisions.

Crucially, however, Anschutz urges BLM to expand its description of the "purpose and need" to explicitly state that the agency will uphold binding, statutorily mandated multiple-use principles and will not prioritize sage-grouse conservation to the detriment of other uses of public lands.

An RMP is meant to be broad and well-balanced. *See Bd. of Cty. Comm'rs of San Miguel v. U.S. Bureau of Land Mgmt.*, 2022 U.S. Dist. LEXIS 30122, at *9-10 (D. Colo. Feb. 9, 2022); *see also NRDC v. McCarthy*, 993 F.3d 1243, 1246 (10th Cir. 2021). "The objective of resource management planning … is to maximize resource values for the public through a *rational*, *consistently applied set of regulations and procedures which promote the concept of multiple use management* … ." 43 C.F.R. § 1601.0-2 (emphasis added). Land-use plans are a preliminary step in the overall process of managing public lands—designed to guide future management actions and the development of subsequent, limited scope plans for resources and uses. *See id.* § 1610.5-3(a) ("All future resource management authorizations and actions, … and subsequent more detailed or specific planning, shall conform to the approved [RMP.]"). As a document designed to "guide and control future management actions and the development of subsequent … limited scope plans for resources and uses," an RMP cannot—and should not—heavy-handedly prioritize one objective over multiple, competing uses of public lands. 43 C.F.R. § 1601.0-2. It must attempt to "strik[e] a balance among the many competing uses to which land can be put." *McCarthy*, 993 F.3d at 1246 (quoting *Utah Shared Access All. v. Carpenter*, 463 F.3d 1125, 1128 (10th Cir. 2006). If BLM continued to create narrow RMPs focused largely on conservation of one resource or another—sage-grouse here, water next , recreation after that, etc.—then it is not inconceivable that after all those conservation-focused RMPs are overlaid, there would be virtually no public lands meaningfully available for other uses such as mineral development or renewables development.

Anschutz, therefore, urges BLM to expand its description of "purpose and need" to explicitly state that the agency will (1) consider FLPMA's multiple-use mandate to ensure that management of GRSG habitat does not preclude reasonable oil-and-gas and renewable-energy development and (2) facilitate wise development of mineral resources, consistent with the Mineral Leasing Act ("MLA").

Under FLPMA, Congress instructed BLM to manage public lands "on the basis of multiple use and sustained yield unless otherwise specified by law." 43 U.S.C. § 1701(a)(7). Congress even defined the terms "multiple use" and "sustained yield":

> The term "multiple use" means the management of the public lands and their various resource values so that they are utilized *in the combination* that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; *a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values* …

Id. § 1702(c) (emphases added). "[S]ustained yield" means "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use." *Id.* § 1702(h).

Similarly, the MLA "was intended to promote wise development of [] natural resources and to obtain for the public a reasonable financial return on assets that 'belong' to the public." *Cal. Co. v. Udall*, 296 F.2d 384, 388 (D.C. Cir. 1961). The MLA authorizes the Department of the Interior to lease public lands "known or believed to contain oil or gas deposits" and requires BLM to hold quarterly lease sales in each state that contains eligible lands. 30 U.S.C §§ 226(a), (b)(1)(A). "The public does not benefit from resources that remain undeveloped, and the Secretary must administer the [MLA] so as to provide some incentive for development." *Udall*, 296 F.2d at 388.

"[A]n agency cannot define its objectives in unreasonably narrow terms." *Nat'l Parks & Conservation Ass'n v. Bureau of Land Mgmt.*, 586 F.3d 735, 746 (9th Cir. 2009) (citation omitted). Otherwise, "the EIS would become a foreordained formality." *Id.* (citation omitted). By stating that the need for the RMP Amendment arose from "continuing losses of [sage-grouse] habitat across all landownerships" and "long-term population declines," Draft EIS at ES-1, BLM puts sole emphasis on sage-grouse conservation. BLM does not state that its sage-grouse management will be consistent with the agency's wider mandate to manage lands for multiple uses. And it won't. Nor does BLM state that its decision will not hinder energy development—as required by MLA. And it will. To its credit, the agency does briefly reference "[f]luid mineral development" and "[r]enewable energy development" in its list of "rangewide management actions" on which it intends to "focus[.]" *Id.* at ES-2. But that brief acknowledgement is insufficient. In its "purpose and need" description, BLM must explicitly recognize that its GRSG conservation policies must complement the agency's multiple-use mandate and will not detrimentally affect other reasonable uses of public lands, including responsible oil-and-gas and renewable-energy development.

In its current form, BLM's "purpose and need" description undermines the MLA's directive to promote wise development of mineral resources, and it subverts FLPMA's mandate that public lands be managed for "multiple use." And as discussed further below, it renders the EIS "a foreordained formality."

2. Anschutz Urges BLM to Consider Another Alternative That Focuses on Increasing Mineral and Renewable Development.

Anschutz appreciates that BLM decided to evaluate, in depth, six separate alternatives and to reject certain proposed alternatives from further evaluation. The alternatives that BLM evaluated cover a range of scenarios: from closing PHMAs to new mineral leasing and designating over 11 million acres of lands as ACECs (both irrational choices) to a much-more-sensible alternative (Alternative 5) that attempts to balance sage-grouse conservation with other public-land uses, including resource development. BLM, however, improperly ignored a proposed alternative to "increase[] development, including additional mineral leasing and development, wind and solar, or rights-of-way." Draft EIS at 2-5. BLM should evaluate such an alternative and consider increasing mineral and renewable energy development.

In rejecting the proposed, development-friendly alternative, BLM explained that "encourage[ing] more development would not be consistent with the purpose and need to address the continued GRSG habitat losses and declines in GRSG populations." *Id.* BLM's justification is illogical. The agency cannot know that an alternative focused on increasing mineral, wind, solar, and renewable development would be detrimental to sage-grouse if it hasn't analyzed that alternative in the first place. BLM's rationale skirts the entire NEPA process. BLM reached a conclusion without performing the requisite analysis. Doing so ignores NEPA and its prescription that agency's take a "hard look" at the effects of alternatives. Moreover, BLM's conclusion is particularly troubling because, later in the Draft EIS, the agency acknowledges that the impacts to sage-grouse from renewable-energy development (wind and transmission projects, in particular) are largely unknown. *See* Draft EIS at 2-92 ("There have been very few published scientific studies on the impacts of wind development on GRSG … ."); *id.* ("[T]he presence of transmission lines negatively impact[] GRSG habitat selection," but "[l]ong-term impacts to GRSG or their demographics are unknown."); *id.* (while "[i]ncreased numbers of known and novel predators may also be a concern, … research on changes in predator abundance at wind facilities is limited.").

NEPA requires BLM "to pause before committing resources to a project and consider the likely environmental impacts of the preferred course of action as well as reasonable alternatives." *N.M. ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 703 (10th Cir. 2009). "NEPA does not require particular results but rather a particular process." *Catron Cty. Bd. of Comm'rs v. U.S. Fish & Wildlife Serv.*, 75 F.3d 1429, 1437 (10th Cir. 1996). It "ensures that a federal agency *makes informed, carefully calculated decisions*." *Id.* (emphasis added). By summarily concluding that an alternative focused on increasing development would harm sage-grouse, BLM robs the public and decisionmakers of the benefits of critical analysis of any potential impacts of that alternative—*before* deciding which alternative to choose. Even if a more development-friendly alternative would necessarily harm sage-grouse, evaluating it would expose the degree and magnitude of this harm. Without any review, much less critical analysis, BLM has engaged in supposition. NEPA requires the agency to take a deep-dive look at reasonable alternatives. And FLPMA requires it to make a decision that achieves an optimal balance between resource development and sage-grouse conservation. Neither happened.

Even though BLM rejected the proposed pro-development alternative, it nonetheless—and paradoxically—evaluated an opposing alternative (Alternative 3) that calls for closing virtually all sage-grouse habitat to development. If the agency wants to—and it must—provide the public with a full spectrum of GRSG management possibilities, then it cannot leave out an alternative that explores the potential for more development. By summarily rejecting the development-friendly

alternative, BLM is violating NEPA's mandate to "provide *full and fair* discussion of significant environmental impacts and … *inform decision makers and the public of reasonable alternatives* that would avoid or minimize adverse impacts … ." 40 C.F.R. § 1502.1 (emphasis added).

BLM also avers that a more development-friendly alternative would be "[o]ut of scope" and not "consistent with the purpose and need to address the continued GRSG habitat losses and declines in GRSG populations." Draft EIS at 2-5. As discussed above, an RMP is meant to be a broad plan that requires balanced evaluation of competing uses of public lands. *See* supra at 11. "[A]n agency cannot define its [RMP] objectives in unreasonably narrow terms." *Nat'l Parks*, 586 F.3d at 746. As one court warned: "BLM may not circumvent this proscription by adopting [select] interests to draft a narrow purpose and need statement that excludes alternatives that fail to meet specific [pre-determined] objectives … ." *Id.* at 748. That is, unfortunately, precisely what BLM has done here. BLM must revise its purpose-and-need statement "in a manner broad enough to allow consideration of a reasonable range of alternatives," including a more development-friendly alternative. *Id.* at 747. By essentially stating that the point of the RMP Amendment here is to evaluate solely those alternatives that, BLM presumes, would benefit sage-grouse, the agency is avoiding a "full and fair" NEPA analysis. It is taking a narrow, result-oriented approach. That is illegal.

Putting aside that BLM hasn't analyzed such an alternative, it is entirely possible that an alternative focused on increasing mineral and renewable-energy development could at the same time ensure that GRSG populations are not detrimentally affected. BLM might do so by opening more PHMA for resource development but increasing site-specific measures to mitigate impacts to sage-grouse: through more NSO stipulations, timing limitations, compensatory mitigation mechanisms, stringent project-design features, and so on. Notably, and as discussed further under section III(B)(3), disturbances from oil-and-gas development do not necessarily equate with greater habitat loss. In many cases, lands reclaimed after oil-and-gas development make better sage-grouse habitat. *See id.* By summarily rejecting the evaluation of a more development-friendly alternative, BLM is choosing to bury its head in the sand. It has shunned in-depth study of a potential silver-bullet solution that could achieve both more resource development and sage-grouse protection. Not only is BLM's action intellectually dishonest, but it also blatantly disregards FLPMA's mandate to strike "a balance among the many competing uses," *McCarthy*, 993 F.3d at 1246 (citation omitted), and NEPA's mandate that an EIS empower decisionmakers to make "informed, carefully calculated decisions." *Catron Cty.*, 75 F.3d at 1437.

Anschutz understands, of course, that "some alternatives will be impractical or fail to further the proposed action's purpose." *Ctr. for Bio. Diversity v. Fed. Energy Regulatory Comm'n*, 67 F.4th 1176, 1182 (D.C. Cir. 2023). Hence, an agency need only "[e]valuate reasonable alternatives to the proposed action." 40 C.F.R. § 1502.14(a). "[F]or alternatives that the agency eliminated from detailed study, [it need only] briefly discuss the reasons for their elimination." *Id.* Anschutz, however, does not see—and BLM does not meaningfully explain—how a more development-friendly alternative would be impractical or otherwise fail to further the proposed action's purpose.

Anschutz also knows that courts grant "considerable deference to the agency's expertise and policy-making role" in evaluating "whether a particular alternative is reasonable." *City of Alexandria v. Slater*, 198 F.3d 862, 867 (D.C. Cir. 1999). Several alternatives had been proposed during the public scoping period that were either infeasible or beyond the scope of the action. BLM understandably—and appropriately—rejected them. One proposal, for example, asked for an evaluation of "a deferral alternative of federal land" in Montana that would defer oil-and-gas

leasing in certain parts of Montana until BLM revised another RMP. Draft EIS at 2-5. Noting correctly that "[a]n alternative that defers leasing in a given area would be substantially similar in effect to an alternative that considers closing an area to leasing," *id.*, BLM rightly rejected its further evaluation.

As BLM stated, "[a] commitment to not offer lands for oil and gas leasing is not an RMP decision." *Id.* Significantly, refusing to offer lands for leasing would also violate MLA's mandate to facilitate oil-and-gas development and FLPMA's mandate to manage public lands for multiple uses. Implementing such an alternative would therefore be beyond BLM's authority, and the agency need not consider alternatives that it cannot implement. *See, e.g.*, *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 756 (2004) (agency did not need to evaluate "the environmental effects of cross-border operations of Mexican-domiciled motor carriers" where agency "lack[ed] discretion to prevent these cross-border operations"); *Ctr. for Bio. Diversity*, 67 F.4th at 1185 (upholding agency's decision that "recognized the limits of its delegated statutory authority and cabined its NEPA analysis accordingly"). The proposed alternative, which focused on increasing development, however, was reasonable, was within BLM's authority to implement, and would have squarely followed FLPMA and the MLA. BLM's decision not to consider that alternative is therefore arbitrary and renders the EIS inadequate. *See High Country Conservation Advocs. v. U.S. Forest Serv.*, 951 F.3d 1217, 1224–25 (10th Cir. 2020) ("Where the agency omits an alternative but fails to explain why that alternative is not reasonable, the EIS is inadequate."); *Westlands Water Dist. v. U.S. Dep't of the Interior*, 376 F.3d 853, 868 (9th Cir. 2004) ("The existence of a viable but unexamined alternative renders an [EIS] inadequate." (citation omitted)).

3. BLM Improperly Portrays Oil-and-Gas Development as a Leading Contributor to Habitat Loss.

BLM's Draft EIS singles out the oil-and-gas sector and exaggerates its effects on sage-grouse habitat. For example, BLM references a study which states that "fluid mineral development can negatively affect GRSG at multiple scales" through direct and indirect impacts. Draft EIS at 2-40. Without citing any authority, the agency even adds that such "[d]evelopment can also contribute to cumulative impacts if it results in an increased distribution of invasive annual grasses or predator abundance." *Id.*

But BLM's attack on the industry is at odds with the data, which show that most sage-grouse habitat decline in the planning area in recent years was caused by wildfire. *See id.* at 1-3. Between 2012 and 2018, for example, there was approximately a three-percent decline in sagebrush availability in the West—primarily due to wildfires. *Id.* ("Sixteen adaptive management habitat triggers were tripped between 2015–2020, mostly the result of sagebrush loss to wildfires.").

Wildfires are a recurring and natural phenomenon in the West. BLM in its Draft EIS does not identify oil-and-gas development as a source of these wildfires—let alone the leading source. The agency does reference a research paper that attributes "fluid mineral development" to "direct impacts (habitat loss and fragmentation) … and indirect impacts (increased noise and behavioral avoidance of human activity and infrastructure, including roads)." *Id.* at 2-40. Yet BLM presents no direct link between oil-and-gas development and increasing wildfires. Without a detailed study

showing that oil-and-gas development is a cause of wildfires, BLM's portrayal of the oil-and-gas industry as the main contributor to sage-grouse habitat loss misleads the public.[4]

Meanwhile, BLM fails to portray the rigorous efforts that oil-and-gas operators undertake to restore lands. BLM should not overemphasize the adverse effects of oil-and-gas development while downplaying—if not outright ignoring—the hard work that oil-and-gas operators do to protect sage-grouse habitats.

A standard federal oil-and-gas lease requires a lessee to "reclaim the land as specified by lessor" before returning the land to the lessor. U.S. Dep't of the Interior, Lease for Oil and Gas, Form 3100-011 § 12 (March 2023).[5] It also requires a lessee to "conduct operations in a manner that minimizes adverse impacts to the land, air, and water, to cultural, biological, visual, and other resources, and to other land uses or users." *Id.* § 6. "Prior to disturbing the surface of the leased lands, lessee must contact lessor to be apprised of *procedures to be followed and modifications or reclamation measures that may be necessary*." *Id.* (emphasis added). In addition to these terms of a standard oil-and-gas lease, there typically are other lease (or drilling-permit) stipulations that require an operator to restore lands to BLM's satisfaction. Similarly, BLM's disturbance cap—which precludes new development if existing disturbance to a sage-grouse habitat exceeds an area's threshold—also incentivizes oil-and-gas operators to conduct timely and effective land restoration.

Even without these extrinsic incentives created through disturbance caps or stringent lease requirements, responsible operators such as Anschutz promptly and painstakingly restore leased lands. Generally, within a year of ceasing operations, they bring the land back to an equivalent—if not a better—condition than that in which they found it. Part of this effort includes refilling the topsoil and replanting native species in disturbed areas. In many cases, these reclaimed lands make better GRSG habitat in the long run. Studies have shown that reclaimed lands typically have higher plant diversity.[6] They also have denser insect populations—a major source of food for sage-

[4] BLM should also consider revising the order of Tables 2-4 through 2-15 to avoid misleading the public as to the impacts of fluid mineral development. Table 2-4 purports to provide a comparison of the "Associated Major Land Use Allocations" under each alternative, but that table includes discussion of only fluid minerals, other minerals, coal, and minor ROWs. The table indicates in every column that other uses of public lands, "Wind, solar, livestock grazing, and major ROWs are addressed in separate tables below." *See* Draft EIS at 2-14. A reader, however, must scroll *over 80 pages* "below" to find those tables, passing multiple other tables comparing "Mitigation," "Habitat Objectives," "Disturbance Cap," "Fluid Mineral Development and Leasing Objective," and "Fluid Mineral Leasing Waivers, Exceptions, and Modifications" first. *See id.* at 2-23 to 2-92 (Tables 2-5 through 2-9). By stacking the tables as it has, BLM makes the impression that fluid mineral development is the "major land use" that is subject to the various mitigation requirements, disturbance caps, and so forth, while the other uses that come later are separate and benign. BLM should revise the tables so that all land uses are addressed and compared together.

[5] Available at: https://www.blm.gov/sites/blm.gov/files/uploads/Services_National-Operations-Center_Eforms_Fluid-and-Solid-Minerals_3100-011.pdf.

[6] *See* Michael F. Currran et al., *Ecological Restoration Practices within a Semi-arid Natural Gas Field Improve Insect Abundance and Diversity during Early and Late Growing Season*, Animals, Dec. 29, 2022.

grouse.[7] If BLM is going to point out the adverse impacts of oil-and-gas development, then it cannot leave out the positive contributions and restoration efforts of oil-and-gas companies.

It is also worth noting that with the advent of hydraulic fracturing in the 2000s, oil and gas are now primarily produced through horizontal drilling. This concentrates multiple wells on a single pad and dramatically condenses and reduces overall surface impacts. To the extent possible, the drilling pads are located on already disturbed areas or areas that are less prone to disturbance. The limited surface areas that do get disturbed during oil-and-gas production are restored to substantially the same or better conditions.

C. COMMENTS IN SUPPORT OF BLM'S PREFERRED ALTERNATIVE 5, AND SOME SUGGESTED CHANGES

As explained above, Anschutz urges BLM to consider a more development-friendly alternative that facilitates greater conventional and renewable-energy production. *See* supra at 12–15. Nonetheless, among existing alternatives, Anschutz supports BLM's selection of Alternative 5 as the preferred one. Specifically, Anschutz appreciates that Alternative 5 attempts to "balance[e] resource uses by managing multiple use according to GRSG habitat designation." Draft EIS at 2-6. Alternative 5 also "provides the BLM with locally relevant decisions that accord with range[-]wide GRSG conservation goals." *Id.* It is the local communities that face the greatest repercussions from BLM's decisions, and Anschutz supports BLM's effort to make "locally relevant decisions."

The following list details the key aspects of Alternative 5 that Anschutz supports, in addition to the specific aspects that BLM should strengthen, reconsider, and/or revise:

- Alternative 5 considers managing GRSG habitats "in coordination and cooperation with state wildlife agencies." *Id.* at 2-10. Because it is the individual states that have the most to lose from overbroad habitat-management policies, Anschutz supports BLM's decision to defer to state agencies. Anschutz urges BLM to take this commitment seriously and to strictly follow state agencies' management recommendations that consider on-the-ground realities, socioeconomic factors, and the needs of local inhabitants.

- Alternative 3 closes PHMAs to leasing and Alternative 4 requires *all* PHMA in Wyoming to be managed with NSO stipulations for new oil and gas leases. *Id.* at 2-2. The State of Wyoming specifically opposed Alternative 4 as being inconsistent with the Wyoming Governor's GRSG executive order and preferred Alternatives 5 (as well as Alternative 2) as most aligned with the state's fluid mineral leasing and development objectives. *See id.* at I-12–I-13. Alternative 5 permits leasing within PHMAs with appropriate NSO (or other) stipulations. *See id.* at 2-14. Anschutz supports BLM's decision under Alternative 5 to keep PHMAs open to leasing with reasonable stipulations—to the extent such stipulations are not inconsistent with a lessee's valid existing rights.

- For Minor Rights-of-Way ("Minor ROW"), Alternative 5 keeps most of a PHMA open, with certain exceptions for active leks and crucial winter ranges. *See id.* at 2-16. Alternative

[7] *See* Michael F. Curran et al., *Insect Abundance and Diversity Respond Favorably to Vegetation Communities on Interim Reclamation Sites in a Semi-Arid Natural Gas Field*, Animals, Apr. 4, 2022.

3, by contrast, excludes all Minor ROW outside of designated utility corridors. *Id.* Anschutz supports BLM's decision under Alternative 5 to handle Minor ROW decisions on an individual basis by considering active leks and crucial winter ranges—instead of implementing a blanket prohibition on all Minor ROW within PHMAs.

- Alternative 5 prescribes NSO near active leks. *See id.* at 2-17. The required NSO distance from leks varies depending on individual states and field offices. *See id.* Anschutz generally supports BLM's decision to implement NSO based on distance to leks. For habitats in Colorado however, Alternative 5 requires NSO to apply within 2 miles of leks. *Id.* Anschutz requests that BLM reduce this distance to 0.6 miles of active leks, consistent with the buffer zone identified in Objective 3.1.1.2 of the Colorado Package. *See* supra at 8–9 for discussion of the Colorado Package.

- Anschutz appreciates that Alternative 5 makes it possible to reconsider habitat boundaries and approve specific projects if—when considering a development proposal—a potential non-habitat is identified among areas currently assumed to be sage-grouse habitats. *See* Draft EIS at 2-19. BLM's process for approving a project in such an area, however, is overly cumbersome. *See id.* at 2-19 to 2-21. Anschutz urges BLM to simplify the process for initiating a project in an area subsequently identified to be a non-habitat and to make project approvals in such areas simpler and faster.

- Anschutz supports BLM's decision to "apply the mitigation hierarchy (avoidance first, then minimization, with compensation last) when authorizing actions resulting in GRSG habitat loss and degradation." *Id.* at 2-22. For Alternative 5, the goal is to achieve "no net habitat loss (full restoration of functional habitats or enhancement of habitats such that it offsets the loss of capacity in impacted areas)." *Id.* The "no net habitat loss" approach is a more-sensible approach than BLM's past use of a "net conservation gain" standard, which is carried forward in Alternatives 1 and 2. *See id.* at ES-3 to ES-4. In recent years, BLM's authority to employ a "net conservation gain" standard for use of the public lands has been the subject of substantial legal scrutiny. FLPMA's multiple-use mandate does not foreclose activities that may have adverse effects on public lands and natural resources, so long as the degradation is not "unnecessary or undue." *See* 43 U.S.C. §§ 1701(a)(7), 1732(b). BLM cannot condition land use on improvement of habitat, particularly where the proposed action would be in exercise of a valid existing right—such as development of a pre-existing lease. Returning to the "no net loss" standard avoids this controversy and is consistent with FLPMA's directive to authorize multiple uses of the public lands while avoiding unnecessary or undue degradation.

- Anschutz also appreciates that Alternative 5 does not limit compensatory mitigation projects to the same area of impact, but when necessary, permits such projects "within the same neighborhood cluster … to the extent practicable or nearest equivalent [Habitat Management Area] designated habitat … ." Draft EIS at 2-23. This is, of course, the more sensible approach. Anschutz also appreciates the range of options available for impact mitigation—minimizing disturbance footprints, utilizing lek buffers, and using Best Management Practices ("BMPs") and Required Design Features ("RDFs")—where impacts to sage-grouse habitats cannot be fully avoided. *Id.* Finally, Anschutz appreciates that Alternative 5 incorporates compensatory mitigation mechanisms, including the option for conservation easements or acquisition of inholdings, to compensate for "impacts that cannot be avoided or minimized to no net habitat loss." *Id.*

- Alternative 5 allows deferral of new projects if direct habitat disturbance from existing and proposed project development exceeds the three-percent project-scale cap in PHMAs (for Wyoming and Montana, this cap is set at five percent). *See id.* at 2-29. Anschutz appreciates that a proposed project can commence once the disturbance is reduced below the threshold—through, for example, restoration projects. However, Anschutz strongly urges BLM to increase the project-scale disturbance cap across all states to five percent (or greater, depending on cluster-specific circumstances) of PHMA so that it is at least consistent with the disturbance caps in Montana and Wyoming. Wyoming's project-scale disturbance cap of five percent may be facially higher than other states' caps, but it includes disturbances from wildfires and agricultural activities—two factors that other states' caps do not include. *See id.* at 2-28. In no event, however, should BLM implement its proposal to apply three- percent cap at Habitat Assessment Framework Fine Scale. That additional, fine-scale cap is not only unrealistic but also creates uncertainty regarding which cap (project-scale or fine-scale) actually applies during permitting.

- Anschutz appreciates that Alternative 5 allows BLM officers to potentially approve projects that exceed disturbance caps if certain criteria are met. *See id.* at 2-34 to 2-39. BLM's criteria for such an approval, however, are overly cumbersome. *See id.* Anschutz urges BLM to simplify the criteria for exceeding disturbance caps and to grant its officers more flexibility in approving such exceptions.

- Anschutz appreciates that Alternative 5 allows lease stipulations such as NSO to be waived or modified by an officer if specific criteria are met. *See id.* at 2-49. But Anschutz urges BLM not to make such waivers or exceptions to lease stipulations subject to public review. *See id.* at 2-51. Energy and infrastructure projects are already mired in bureaucratic red tape and take forever to materialize. By requiring a public review period before approving waivers of exceptions, BLM will only further delay—if not altogether disrupt—numerous oil-and-gas projects. Requiring "public review" before modification to lease stipulations could also open the floodgates for potential lawsuits alleging that BLM approved changes to lease stipulations without offering an adequate opportunity for public review.

- Alternative 3 unreasonably hinders renewable-energy and transmission projects by excluding all developments in PHMAs. *See id.* at 2-93. Alternative 5, meanwhile, permits the development of renewable-energy and transmission projects with appropriate "avoidance" measures. *Id.* Similarly, under Alternative 5, Major ROW projects in PHMA are subject to "avoidance" measures and not altogether excluded—unlike Alternative 3, which excludes Major ROW projects outside of designated utility corridors. *See id.* at 2-96 to 2-98. Alternative 5 also allows "micro-siting" to avoid placement of infrastructure near active leks or in connectivity corridors between seasonal habitats. *Id.* at 2-96. These are all sensible approaches: Anschutz urges BLM to retain them in the final EIS.

- Anschutz appreciates that Alternative 5 recognizes a stewardship habitat management area. *See id.* at 2-189 ("Wyoming's Alternatives 5 and 6 are considering Stewardship Habitat Management Areas (SHMA) in addition to PHMA and GHMA. The SHMA designation is being applied in northeastern Wyoming where private landowners worked with the State of Wyoming to establish management objectives and approaches."); *see also id.* at 2-12 (row titled "Wyoming Habitat Management Area Alignments"). As discussed above, SHMA are areas that private landowners protect for sensitive species through Habitat Conservation Plans ("HCPs"), Conservation Benefit Agreements ("CBAs"), and/or

Candidate Conservation Agreements with Assurances ("CCAA"), in coordination with the U.S. Fish & Wildlife Service. As part of these plans and agreements, landowners undertake various specific activities to address threats to wildlife. Stewardship areas represent a sensible way for managing lands containing sensitive wildlife in cooperation with local landowners—without a top-down mandate from federal agencies. Anschutz is pleased to see that Alternative 5 includes the concept of stewardship areas among its list of habitat management areas.

- BLM's Alternative 2 largely reflects its management decisions from the 2019 Amendments to the 2015 Sage-Grouse RMP. In October 2019, the U.S. District Court for the District of Idaho enjoined BLM from implementing the 2019 Amendments. The court found that (a) the 2019 Amendments were not based on a rangewide analysis; (b) BLM failed to "evaluate climate change impacts;" and (c) BLM generally removed "protections for the sage grouse that were unjustified by science or conditions on the ground." *W. Watersheds Project v. Schneider*, 417 F. Supp. 3d 1319, 1324 (D. Idaho 2019). Although the court did not vacate the 2019 Amendments, the court's decision to enjoin their implementation shows that the 2019 Amendments are flawed and would be susceptible to further challenges. This is another reason why Alternative 5 represents the more-sensible choice among the evaluated alternatives.

- Lastly, as discussed next, Anschutz urges BLM to revise its proposed adaptive-management approach under Alternative 5 (as well as under all the other alternatives).

D. COMMENTS IDENTIFYING FACTUAL, TECHNICAL, AND LEGAL FLAWS IN BLM'S OTHER ANALYZED ALTERNATIVES

1. BLM's Adaptive Management Approach Under Alternatives 3, 4, 5 and 6 Is Legally Flawed.

To address unanticipated negative impacts to GRSG, BLM proposes to employ adaptive-management techniques in Alternatives 3, 4, 5 and 6. *See* Draft EIS at 2-122. According to BLM, adaptative management helps ensure "that implementation of allocative decisions and limitations on disturbance are effective at conserving sage-grouse and their habitats[.]" *Id.* at 2-120. Anschutz generally supports BLM's decision to utilize adaptive management as part of its overall conservation strategy. BLM's proposed execution of the adaptative-management approach here, however, is flawed and arbitrary.

To implement its adaptative-management approach, BLM proposes to rely on "the Targeted Annual Warning System procedures,"—better known as TAWS—for identifying irregularities in sage-grouse habitat. *Id.* at 2-121. The agency wants to make TAWS the primary tool for identifying habitat-disturbance thresholds or "triggers." Under TAWS, "[a] soft habitat threshold is met when any single occurrence or combination of occurrences in … a neighborhood cluster result in the loss of more than 5% of the area capable of supporting sagebrush in a given year." *Id.* at 2-122. "A hard habitat threshold will be met when existing sagebrush extent … within a neighborhood cluster drops below 65% of the area capable of supporting sagebrush." *Id.* (citations omitted). When there is a soft threshold trigger, BLM withholds project activities for 60 days to conduct further assessment and to determine a cause for the trigger. *Id.* at 2-125. If a "causal factor" is not identified within 60 days, the agency then initiates a six-month review process during which it does not

permit any activity. *Id.* If there is a hard threshold trigger, BLM cases all activities in that area for six months—or longer, if needed. *Id.*

The TAWS has been universally criticized as flawed and unreliable for at least three reasons.

First, each time there is a threshold trigger—soft or hard—BLM prohibits development activities in an entire "neighborhood cluster" until it identifies a causative factor for the trigger. These neighborhood clusters, however, can encompass enormous areas, so BLM's cessation of activities can implicate multiple operations at once. Therefore, BLM's response has been overly broad.

Second, pinpointing a causative factor can be difficult and extremely time-consuming. While doing so, the agency precludes an operator from conducting any activity. But there is no strict time limit by which BLM must complete this evaluation. BLM could take weeks, months, or longer. BLM's choice to preclude development activities—essentially indefinitely—in large areas without any data to justify doing so could amount to arbitrary decision-making. *See Friends of Marolt Park v. U.S. Dep't of the Interior*, 382 F.3d 1088, 1096 (10th Cir. 2004) (An agency is obligated to show "a rational connection between the facts found and the choice made.") (citation omitted)).

Finally, instead of authorizing new activity once a disturbance trigger is identified, BLM proposes to withhold new activities until habitat is restored back to its original condition. *See* Draft EIS at 2-122 ("A hard or soft habitat threshold can be reversed if restoration of sagebrush vegetation communities within the neighborhood cluster *returns to the sagebrush conditions and/or habitat function prior to the events that resulted in meeting a habitat threshold*.") (Emphasis added.). This is completely unrealistic: in the case of a fire, for example, a *full* restoration could take decades. In the meantime, operators would be unable to use the leases that they paid vast sums to acquire.

The TAWS relies on state agencies to input wildlife data into the system. But state agencies, particularly in Wyoming, have made clear that the state's own adaptive-management processes—while not perfect—are nimbler and more effective than BLM's TAWS. If BLM is going to use adaptive-management techniques, then it must identify a better and more reliable system than TAWS. It should listen to, and incorporate input from, state wildlife agencies and project proponents who have pointed out the flaws with TAWS and have proposed alternative ways for BLM to make habitat-management decisions.

2. BLM Should Adopt Analysis Frameworks Consistent With Those Used by the States for Impact Assessments and Management Decisions.

BLM aims to provide a consistent Habitat Assessment Framework ("HAF"), with uniform metrics and standards across western federal lands, *see* Draft EIS at 2-26–2-27; however, the revised HAF sometimes conflicts with the approaches and metrics that are already used by the states and that have been used by BLM and federal project proponents since 2015. If BLM wishes to introduce a revised framework and metrics for exclusive use in making project and management decisions on federal land, BLM should provide analysis and justification to demonstrate why the new framework is valid, as well as why the metrics and approaches currently in use are no longer valid. BLM should propose its new framework in addition to, instead of to the exclusion of, the current frameworks that are still in use by many states and numerous projects.

The HAF is useful for understanding habitat functionality but does not provide clear metrics on which to base management decisions. The HAF is subjective and open to interpretation as to the

functionality of habitat and the scale at which current disturbances impact that functionality. BLM should consider using a tool like the State of Wyoming's Density Disturbance Calculation Tool ("DDCT") instead of the HAF to determine whether a landscape can support additional development. The DDCT is simple to apply and objectively accounts for loss of habitat, direct and indirect impacts, local conditions. It can be used to determine the nature and magnitude of impacts attributable to natural and anthropogenic land uses. Additionally, the DDCT has been supported by both BLM and the U.S. Fish & Wildlife Service as an appropriate standard for conservation planning and management across the range of the GRSG.

The State of Wyoming's Executive Order 2019-3, Appendix C, describes the similarities in the DDCT and HAF multi-scale assessments, including in the assessment of impacts, mitigation benefits, habitat quantity, and habitat quality. However, there are important differences. Importantly, the DDCT:

- identifies suitable habitat based on local conditions, not rangewide averages;
- uses a consistent definition of disturbance;
- maintains a single comprehensive database of existing disturbance;
- is science based and has been supported by both BLM and the U.S. Fish & Wildlife Service; and
- can be applied consistently across all geographies and impact types without subjective interpretation of HAF definitions of suitability.

If BLM uses the HAF alone and does not develop a well-defined, objective analysis tool, it will result in inconsistent habitat assessment approaches, metrics, management objectives, and analytical methods that will lead to substantial complexity and confusion for all stakeholders. This can be avoided by allowing for the use of assessment tools, such as the DDCT, that are clear and consistent with those already developed by each state.

3. BLM's Development-Limiting Alternatives Violate FLPMA's Multiple-Use Mandate and Federal Mining Laws' Mandates to Encourage Mineral Development.

FLPMA. As discussed above in Section III.B.1., under FLPMA, Congress instructed BLM to manage public lands "on the basis of multiple use and sustained yield," 43 U.S.C. § 1701(a)(7)—not based on an environmentally protective framework to the exclusion of other uses. Thus, "[t]he objective of resource management planning by [BLM] is to maximize resource values for the public through a rational, consistently applied set of regulations and procedures which promote the concept of multiple use management." 43 C.F.R. § 1601.0-2.

Oil-and-gas leasing and development is one of the multiple uses contemplated by Congress. *See* 43 U.S.C. § 1702(c). When creating a management plan, BLM must also consider "the impact on local economies and uses of adjacent or nearby non-Federal lands." 43 C.F.R. § 1601.0-8. This means that BLM must "strik[e] a balance among the many competing uses to which land can be put." *N.M. ex rel. Richardson*, 565 F.3d at 690 n.3 (quoting *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 58 (2004)).

Federal Mining Laws. Enacted in 1920 in the wake of World War I, the Mineral Leasing Act ("MLA") demonstrates incontestably that ensuring energy security and spurring economic growth was among Congress's top priorities in passing the law. *See, e.g., Arkla Expl. Co. v. Tex. Oil &*

Gas Corp., 734 F.2d 347, 358 (8th Cir. 1984) ("The broad purpose of the MLA was to provide incentives to explore new, unproven oil and gas areas through noncompetitive leasing, while assuring through competitive bidding adequate compensation to the government for leasing in producing areas"); *Geosearch, Inc. v. Andrus*, 508 F. Supp. 839, 842 (D. Wyo. 1981) ("The purpose of the Act is to promote the orderly development of oil and gas deposits in publicly owned lands of the United States through private enterprise").

Similarly, in the Mining and Minerals Policy Act of 1970, "Congress declare[d] that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in … the orderly and economic development of domestic mineral resources … to help assure satisfaction of industrial, security and environmental needs." 30 U.S.C. § 21a. As such, Congress expressly stated that "[i]t shall be the responsibility of the Secretary of the Interior to carry out this policy when exercising his authority under such *programs as may be authorized by law other than this Act*." *Id*. (emphasis added). In other words, BLM (through its authority delegated from the Secretary) must follow this express policy of fostering the development of domestic mineral resources when engaging in land-planning exercises and authorizations under FLPMA and the MLA.

BLM recognized that it must "achieve rangewide GRSG conservation goals consistent with the agency's multiple use and sustained yield mission." Draft EIS at ES-1. The agency's selection of Alternative 5 as its preferred alternative best supports this obligation. On the other hand, BLM's other evaluated alternatives, to varying degrees, restrict oil-and-gas development across large swaths of ten states. The number of acres withdrawn from mineral development under Alternatives 3 and 6, in particular, violate the MLA's and the Minerals Policy Act's directives to promote wise and productive development of public lands.

4. BLM Exceeds Its Statutory Authority by Abusing the ACEC Designation Process.

BLM is proposing to designate—at the high end under Alternatives 3 and 6—up to 11,139,472 acres of ACECs across ten states. Draft EIS at 2-2. In the three states where Anschutz operates, BLM is proposing approximately 1.2 million acres of ACECs. *See id*. at 2-118 (Wyoming: 839,225 acres, Utah: 365,181 acres, and Colorado: 4,547 acres). Under Alternative 3, the ACECs are managed as PHMA (*i.e.*, off limits to mineral and non-energy mineral leasing, ROWs, renewable energy projects, etc.). *Id*. at 2-118–2-119.

There is no question that BLM may propose designation of certain areas as ACECs. But it can only do so for lands for which "special management prescriptions" are necessary, and only to the extent such designation will protect a relevant and important resource identified for singular protection. BLM does not have statutory or regulatory authority to designate broad swaths of ten states as ACECs. Moreover, even where BLM designates an ACEC, the agency must still allow for multiple uses—including mineral and renewables development—to the extent such uses are compatible with the protection of specifically identified, relevant, and important resources.

Under FLPMA's multiple-use framework, BLM must consider "the protection of public land areas of critical environmental concern [ACECs]." 43 U.S.C. § 1701(a)(11). ACECs are defined as "areas within the public lands *where special management attention is required* … to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife

resources or other natural systems or processes, or to protect life and safety from natural hazards." *Id*. § 1702(a) (emphasis added).

As illustrated by FLPMA's legislative history,[8] ACECs were intended to be narrow designations with management prescriptions tailored to protect a specific resource requiring the designation. As one Senate Report states:

> [The ACEC] category is not designed to be a "no growth" category. Only uncontrolled development is unwanted. The adjective "incompatible" is present to make certain that development is to be allowed which is compatible with the basic environmental or renewable resources values or safety problems of the land in question. In short, multiple use, when planned, is clearly expected. Secondly, the category has been subdivided into subcategories to pinpoint the basic values of the land involved so as to better provide opportunities for development which can demonstrate its compatibility with such values.

S. Rep. No. 93-197, at 128 (1973). This language demonstrates that Congress never intended the designation of ACECs to override multiple-use management. *See also* S. Rep. No. 94-583, at 43 (1975) ("[U]nlike wilderness areas … [ACECs] are not necessarily areas in which no development can occur. Quite often, limited development, when wisely planned and properly managed, can take place in these areas without unduly risking life or safety or permanent damage to historic, cultural or scenic values or natural systems or processes.").

BLM's regulations,[9] its ACEC Manual (the "Manual"), and its ACEC Instruction Memorandum ("IM") specify that BLM can designate ACECs only for areas that contain a resource that meets criteria for relevance and importance. *See* 43 C.F.R. § 1610.7-2; Bureau of Land Mgmt., Release 1-1541, ACEC Manual (1988);[10] Bureau of Land Mgmt., IM 2023-013, Clarification and Interim Guidance for Consideration of Areas of Critical Environmental Concern Designations in Resource

[8] FLPMA's legislative history, as well as the concept of ACECs, can be traced back through the Land Use Policy and Planning Assistance Act of 1972, *see* S. Rep. No. 92-869, at 635–36 (1972), and the National Resource Lands Management Act, S. Rep. No. 93-873, at 3 (1974). Both bills were never enacted as law. But they introduced early definitions of ACECs just years before FLPMA was passed.

[9] After BLM published the Draft EIS, the agency finalized new regulations codifying instructions previously found in the ACEC Manual guiding the agency's designation of ACECs. 89 Fed. Reg. 40,308, 40,312 (May 9, 2024). The regulations, which became effective on June 10, 2024, do not apply to BLM's currently proposed ACECs. In any event, the new regulations apply the same standards for designating ACECs: "special management is required to protect and prevent irreparable damage to … relevant and important [resource] values." *Id.* at 40,337. Indeed, in adopting the new regulations, BLM clarified that "[t]he final element of the standard for ACEC designation means more than finding special management attention will benefit the identified values; rather, it requires a finding that special management is necessary for their stewardship." *Id.* at 40,330.

[10] Available at: https://www.ntc.blm.gov/krc/system/files?file=legacy/uploads/5657/5_ 1613_ ACEC _Manual %201988.pdf.

Management Plans and Amendments (2022)[11] ("A potential ACEC must meet the relevance and importance criteria described in the BLM's regulations (43 CFR 1610.7-2) and MS-1613."). An area may meet the relevance criteria if it contains one or more of the following:

1. A "significant historic, cultural, or scenic value," 43 C.F.R. § 1610.7-2(a) which may include "rare or sensitive archeological resources and religious or cultural resources important to Native Americans." Manual § 1613.11(A)(1).

2. A "fish or wildlife resource," 43 C.F.R. § 1610.7-2(a), which may include "habitat for endangered, sensitive or threatened species, or habitat essential for maintaining species diversity," Manual § 1613.11(A)(2).

3. A "natural system or process," 43 C.F.R. § 1610.7-2(a), which may include "endangered, sensitive, or threatened plant species; rare, endemic, or relic plants or plant communities which are terrestrial, aquatic, or riparian; or rare geological features," Manual § 1613.11(A)(3).

4. "[N]atural hazard[s]," 43 C.F.R. § 1610.7-2(a) such as "areas of avalanche, dangerous flooding, landslides, unstable soils, seismic activity, or dangerous cliffs." Manual § 1613.11(A)(4).

Once BLM determines that an area contains a relevant value, resource, system, process, or hazard, it must then determine that the resource is properly "important." BLM's Manual clarifies that "[t]he value, resource, system, process, or hazard … must have substantial significance and values in order to satisfy the 'importance' criteria." Manual § 1613.11(B). "Substantial significance" "requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern." 43 C.F.R. § 1610.7-2(a)(2). This generally requires "compar[ison] to any similar resource." Manual § 1613.11(B)(1). A relevant resource might also be deemed "important" if it has qualities that make it "fragile, sensitive, rare, irreplaceable, exemplary, unique, endangered, threatened, or vulnerable to adverse change;" has been recognized as "warranting protection in order to satisfy national priority concerns or to carry out the mandates of FLPMA;" has qualities needed to "satisfy public or management concerns about safety and public welfare;" or "[p]oses a significant threat to human life and safety or to property." *Id.* § 1613.11(B).

FLPMA further requires that a relevant and important resource must demand special management attention to qualify for ACEC designation. 43 U.S.C. § 1702(a); IM 2023-013 ("To be designated as an ACEC, an area must require special management attention to protect the relevant and important values supporting designation."). Special management attention necessitates "management prescriptions developed during preparation of an RMP or amendment expressly to protect the important and relevant values of an area from the potential effects of actions permitted by the RMP." Manual § 1613.12. If the resource is adequately protected under the RMP, then the area is *not* in need of special designation as an ACEC. *Id.*

Accordingly, the ACEC-designation process was never intended to serve as a tool for BLM to withdraw millions of acres of public lands from resource and energy development. An ACEC designation is a resource-specific consideration, and the geographic scope of the ACEC and its

[11] Available at: https://www.blm.gov/policy/im-2023-013.

management prescriptions must be narrowly tailored. Under FLPMA, before BLM designates an ACEC, BLM must determine that the resource or other value that BLM considers worthy of ACEC protection is relevant, important, *and* requires special management attention. As discussed next, BLM has failed to meet these requirements for the broad swaths of lands it is proposing to designate as ACECs under Alternatives 3 and 6, for three reasons.

First, BLM has failed to meet its statutory and regulatory obligation to explain *why* the resources or values in the proposed ACECs are relevant, important, *and* require special management attention beyond those protections already afforded by 77 existing RMPs across ten states, and provided by existing state-specific sage-grouse protections. BLM merely evaluated ACECs nominated by members of the public, *see* Draft EIS, App. 5 at 5-3, deemed "[a]ll areas with GRSG and their habitats … to meet the relevance criteria," *id.* at 5-4, and then conducted state-specific "importance" evaluations, *id.*at 5-5 to 5-47. But in that state-specific review, simple characteristics like high densities of sage-grouse or genetic linkages between populations was sufficient to warrant "important" designations. In other words, BLM relied upon characteristics that are common across populations (because populations are generally doing well) in all ten states to declare the populations "important." In any event, most critically, BLM failed to justify its conclusions that the existing RMPs and state-specific plans are insufficient to protect the sage-grouse. In Appendix 5, in the section titled "Special Management," BLM states: "See the ACEC section in Chapter 2 for the special management being considered for the ACECs under Alternative 3 and Alternative 6." *Id.* at 5-51. But in Chapter 2, BLM merely repeats the designation criteria, summarizes the nominations, and provides *zero discussion* of the need for special management attention. *See* Draft EIS at 2-117 to 2-119.

Second, the proposed ACECs cover far too much land. Their geographic scope is enormous and disproportionate to their supposed goals. BLM fails to properly define the ACEC borders to fit the "relevant" or "important" resources it attempts to define. BLM is required to geographically limit an ACEC to fit the unique "special management" approach needed to protect the relevant and important resources. Nothing more. *See* Manual § 1613.12; *see also id.* § 11613.22(B)(2) ("The size of a proposed ACEC shall be as necessary to protect life and safety or the important and relevant values within the context of the set of management prescriptions for public lands in the vicinity which would be established by each RMP alternative."). Thus, such "necessary" prescription should be tailored to protect that resource while also permitting other uses in the vicinity authorized by the RMP. Here, BLM has completely ignored its obligation to limit ACECs to the land "necessary" to protect the "relevant" and "important" resources by proposing to designate—at the high end under Alternatives 3 and 6—approximately 11,139,472 acres of ACECs across ten states. Draft EIS at 2-2 to 2-3.

Third, the proposed ACECs are not designed to accommodate multiple uses. Instead, under Alternatives 3 and 6, BLM proposes blanket restrictions, including no oil-and-gas leasing and no renewable energy development, or severely restricted use of the surface. Congress neither expected nor authorized BLM's designation of ACECs to prohibit all other uses of the land. *See* S. Rep. No. 94-583, at 43; S. Rep. No. 95-734, at 128.

5. BLM's Development-Limiting Alternatives Hinder Domestic Oil-And-Gas Production to the Detriment of National Security and the Environment.

Due in large part to oil-and-gas production on public lands, the United States has become the leading petroleum producer in the world. In doing so, it has deterred the Organization of the Petroleum Exporting Countries ("OPEC") from cutting its production to increase prices. *See* Timothy J. Considine, *The Fiscal and Economic Impacts of Federal Onshore Oil and Gas Lease Moratorium and Drilling Ban Policies*, at xi (2020).[12] The ability of U.S. producers to supply abundant oil and gas to the world market has changed geopolitical dynamics for the better, resulting in greater energy security for the U.S. and its allies. Federal agencies (including BLM) have recognized that discouraging domestic oil-and-gas production results in the United States' and its allies' greater dependence on foreign sources of oil and gas produced in jurisdictions with far fewer and less-protective environmental laws and regulations. *See* Bureau of Land Mgmt., DOI-BLM-HQ-3100-2023-0001-EA, Supplemental Environmental Assessment Analysis for Greenhouse Gas Emissions Related to Oil and Gas Leasing in Seven States from February 2015 to December 2020, at 26 (2022) (citing U.S. Energy Info. Admin., Annual Energy Outlook (2022)).[13]

Energy demand in the United States and globally is expected to increase significantly in the coming years. *See* Energy Infor. Admin., Annual Energy Outlook (2022).[14] If oil and gas cannot be produced efficiently and effectively in the United States, they will have to be imported from abroad, most likely from the OPEC countries that not only lack protective environmental controls but also have been—and continue to be—hostile to American and democratic interests around the world. *See* DOI-BLM-HQ-3100-2023-0001-EA at 26 (acknowledging that interruptions of domestic oil-and-gas lease sales result in greater dependence on foreign sources that are produced with less-protective environmental measures).

Importing foreign petroleum also increases global emissions associated with shipping over long distances, risks ocean contamination from spills, increases emissions associated with transporting petroleum from coastal ports to inland destinations, and creates other needless hurdles to providing American consumers with petroleum. And petroleum's importance—even in an age when climate change affects almost all energy-production decisions—is unwavering. Whether used for fueling transportation or generating electricity, for chemical production or heating and cooling, for steelmaking or the production of food for billions of people, or for the creation of tens of thousands of other consumer and industrial products, oil and gas remain critical to economies and livelihoods around the world—as Congress recognized by passing the MLA in the wake of World War I to promote orderly oil-and-gas production. *See Geosearch, Inc,* 508 F. Supp. at 842 (MLA meant to "promote the orderly development of oil and gas deposits in publicly owned lands of the United States through private enterprise"); *Arkla Expl. Co.*, 734 F.2d at 358 (MLA intended "to provide incentives to explore new, unproven oil and gas areas through noncompetitive leasing").

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[12] Available at: https://www.eoriwyoming.org/projects-resources/publications/eori-library/the-fiscal-and-economic-impacts-of-federal-onshore-oil-and-gas-lease-moratorium-and-drilling-ban-policies.

[13] Available at: https://eplanning.blm.gov/public_projects/2022218/200537447/20069931/250076113/WEG%20EA.pdf.

[14] Available at: https://www.eia.gov/outlooks/aeo/pdf/AEO2022_ReleasePresentation.pdf.

In a recent draft EIS for the 2023–2028 National Outer Continental Oil and Gas Leasing Program, the Bureau of Ocean Energy Management ("BOEM") acknowledged that limiting domestic oil-and-gas production would lead to an increase in "[t]ankering across the Pacific, [Gulf of Mexico], or Atlantic Regions … due to an expected increase in foreign oil imports." Bureau of Ocean Energy Mgmt., 2023–2028 National Outer Continental Shelf Oil and Gas Leasing Program, at 212–213 (2022).[15] By reducing the potential for oil-and-gas development in the most mineral-rich states in a mineral-rich nation, BLM—particularly if it chooses Alternative 3—would markedly reduce domestic oil-and-gas production to the detriment of the United States and the rest of the world.

Indeed, Alternative 3 would devastate domestic oil-and-gas production. Under that alternative, BLM would elevate all habitat management areas to PHMAs. It would then close PHMAs "to new fluid mineral leasing, saleable minerals/mineral materials permits, and nonenergy leasable minerals leasing." Draft EIS at 2-2. BLM would not even conditionally permit new leasing on lands managed as PHMAs under Alternative 3. Rather, the agency would recommend entire PHMAs "for withdrawal from location and entry under the Mining law of 1872." *Id.* at ES-4.

BLM need not prevent oil-and-gas or other energy development on such vast swaths of lands to protect GRSG habitat. There are more-than-adequate safeguards in place all around the western United States on public lands to ensure that site-specific oil-and-gas development does not lead to significant environmental impacts. And BLM knows that: it manages many of those safeguards. Federal statues, including NEPA itself and its implementing regulations, equip federal agencies with site-specific review mechanisms and mitigation tools to employ before they issue individual leases or drilling permits. *See, e.g.*, *N.M. ex rel. Richardson*, 565 F.3d at 718 (noting that NEPA allows BLM to evaluate environmental impacts when site-specific impacts become identifiable); *see also* 40 C.F.R. § 1501.11 (encouraging agencies to wait to conduct site-specific analysis until the location of potential impacts of an action are sufficiently definite); Draft EIS at 2-23 ("BLM can consider site-specific minimization measures beyond those listed in this plan, through site-specific environmental review to meet the no net habitat loss standard.")

Indeed, BLM has a plethora of tools available to it, and it acknowledges as much in the Draft EIS, which states that the agency can apply NSO, controlled-surface-use, or seasonal timing limitations to oil-and-gas leases to minimize impacts to sage-grouse. *See id.* at 2-47 to 2-48; *see also id.* at 4-4 ("To address impacts identified, stipulations would be associated with new fluid mineral leasing (e.g., oil, gas, and geothermal) in GRSG HMAs including NSO, CSU/disturbance caps, and TL stipulations on new leases."). Some of these "stipulations are applied at the leasing phase and allow the BLM to carefully consider site-specific factors during implementation that provide the appropriate level of protection and restrictions." *Id.* at 2-131. Depending on state-specific requirements, BLM can also relocate operations to areas outside of sensitive sage-grouse habitat, to areas of existing disturbance, or to areas where site-specific topography mitigates project impacts. *Id.* at 2-134. So can the agency implement stipulations that require reasonable modification of project design features to direct noise away from breeding or nesting habitats. *See id.* Similarly, before approving development, BLM reviews lease provisions and stipulations to ensure that they are adequate, and if needed, the agency can add conditions to oil-and-gas lease terms. *See, e.g.*, Bureau of Land Mgmt., IM 2008-032, Att.1-1, Instructions for Documentation of Exceptions, Waivers, and Modifications for Lease Stipulations, Terms and Conditions, and

[15] Available at: https://www.boem.gov/sites/default/files/documents/oil-gas-energy/national-program/2023-2028-NationalOCSOilGasLeasingDraftPEISVol1.pdf.

Conditions of Approval, at 4 ("It may be necessary to add, delete, or modify lease stipulations in the land use plan as a result of pre-lease issuance parcel reviews, statewide lease stipulation consistency reviews, plan amendments, changed circumstances on the ground, or changed resource protection priorities.");[16] Bureau of Land Mgmt., General Oil And Gas Leasing Instructions ("Drilling proposals are subject to the lease terms and stipulations that are attached to the lease and necessary mitigation measures that are consistent with the lease rights.").[17] Where such comprehensive and multi-layer processes, including site-specific remedies and mitigation provisions, are obviously available and regularly employed to ensure responsible oil-and-gas development before drilling is authorized, BLM need not—and should not—implement broad-stroke conservation measures that render massive areas of public lands off-limits to oil-and-gas and other energy development.

Nor is there any guarantee that restricting oil-and-gas development on public lands would necessarily benefit sage-grouse populations. BLM itself acknowledges that overly restrictive management measures could simply "push infrastructure to surrounding private and state lands which may still result in GRSG habitat fragmentation." Draft EIS at 4-4; *see also id.* at 4-243 ("Closures and surface use restrictions, such as NSO stipulations, could also cause an operator to move to nearby private or state land if similar resources are available and recoverable with no such restrictions."). Some of this shift could happen on "potentially … higher quality habitat[] on private lands if BLM-administered lands could not be used," *id.* at 4-5, hence causing greater overall impacts to sage-grouse populations. BLM should also not lose sight of the fact that placing heavy restrictions on a sagebrush-dominated landscape—to avoid impacts to sage-grouse—could have negative effects on other resources and landscapes too. Doing so could "push development into other vegetation regimes where cultural resources and areas of tribal interest may also exist." *Id.* at 4-217. In Northwest Colorado, for example, "there are known concentrations of archaeological resources in pinyon-juniper vegetation areas that could face increased potential for impacts if ground-disturbing activities are directed into those areas when sagebrush-dominated areas are more restrictive." *Id.*

Moreover, if development simply shifted to state or private lands because of stringent restrictions on public lands, the federal government would see diminished revenues and federal royalties. BLM would also lose the opportunity to implement best-management-practices or apply lease stipulations and shape responsible development because it has either limited to no jurisdiction over development activities on non-federal lands.

6. BLM's Development-Limiting Alternatives Will Severely Harm States' Economies and Citizens.

The most development-limiting alternative, Alternative 3—which constricts resource development over a vast area—ignores state and local economies. It is a textbook example of agency overreach. FLPMA's regulations do not allow BLM to disregard nearly all other uses of public land that benefit local economies. *See* 43 C.F.R. § 1601.0-8 (BLM must consider "the impact on local economies"). Nonetheless, under Alternative 3, BLM fails to consider on-the-ground realities and proposes to manage all habitat areas as PHMAs closed to new fluid mineral leasing. *See* Draft EIS

[16] Available at: https://www.blm.gov/sites/blm.gov/files/IM2008-032_att1.pdf.

[17] Available at: https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/general-leasing.

at 2-2. An imprudent land-management plan—like Alternative 3—that prioritizes conservation to the detriment of other uses would ruin the livelihood of communities dependent on energy development.

Oil-and-gas (and renewable-energy) development and production is fundamental to the economies of many Western states. As BLM itself acknowledges, "[o]il and gas extraction is important for supporting the local economies in many communities in the analysis area, especially where a large percentage of employment comes from the fluid mineral industry on federal lands." *Id.* at 3-45. To be clear, oil-and-gas and mining are not just "important for supporting the local economies": they are the lifeblood of many rural western towns. In Wyoming, for example, 21 of the state's 23 counties produce oil and/or natural gas. *See* Petro. Assoc. of Wyo., Oil and Gas Facts and Figures.[18] The oil-and-gas industry provides crucial revenue for virtually every public service offered by the state.

In 2022, for example, the oil-and-gas industry was the largest economic driver in Wyoming, generating about $9 billion in economic activity and employing close to 60,000 people. *Id.* By comparison, the second largest industry in Wyoming that year—travel and tourism—contributed only about $2.5 billion. *Id.* Wyoming's oil-and-gas industry paid over $5.7 billion in labor income that year. *Id.* That same year, Wyoming's oil-and-gas industry contributed $2.72 billion to state and local governments in the form of various taxes, royalties, and levies. *Id.* Around $1.39 billion of that money went to K-12 education, followed by $623 million to the state's general fund, and $208 million to public infrastructure. *Id.* Oil-and-gas production, by itself, accounted for over 40% of the total property taxes levied in Wyoming and nearly 80% of the property taxes levied on all minerals. *Id.*

Western states such as Wyoming are among the largest producers of oil and natural gas on federal lands, making them disproportionally vulnerable to BLM policies and plans. *See id.* But there is no need to point out to BLM the economic repercussions of its actions. BLM knows that. In its Draft EIS, for example, the agency acknowledges that

> [m]any western states and local governments are heavily dependent upon these mineral revenues for a significant portion of their annual budgets and rely on dollars generated from mineral development to fund schools, roads, and other public services. These revenues could be indirectly impacted by BLM management decisions on GRSG HMAs, if the decisions affect the level of use of natural resources.

Draft EIS at 3-50. BLM must seriously internalize the grave economic repercussions its decisions could have on local economies and public services when choosing the preferred alternative.

Based on BLM's own analysis in the Draft EIS, the cost of adopting Alternative 3—compared to other alternatives—is stark. Alternative 3 would lead to a loss of "about 25,000 to 36,000 … total jobs (about 11,000 to 14,000 fewer direct jobs)" compared to Alternative 1, resulting in "about $2.0 million to $2.9 billion less in total labor income" annually. *Id.* at 4-158, 10-32. There would be "about $9.2 billion to $12.8 billion less in economic output (about $6.5 billion to $8.5 billion less in direct economic output)" under Alternative 3. *Id.* at 4-158, 10-33. From BLM's own projection, Alternative 3 would also "result in a large decrease in royalty revenue, severance tax

[18] Available at: https://pawyo.org/facts-figures/.

revenue, ad valorem tax revenue, and other oil and gas production tax or fee revenues of about $945 million to $1.3 billion less than under Alternative 1." *Id.* at 10-33. Not surprisingly, "[t]he reductions in tax revenues [under alternative 3] would put large strains on local governments' budgets and would impact public services that are offered to the communities." *Id.*

It is not just the oil-and-gas sector that would suffer under Alternative 3. "[D]ue to the highest level of restrictions on solar and wind site development," "[e]conomic contributions from wind and solar activities" would also dwindle. *Id.* at 10-35. Similarly,

> BLM-management decisions regarding restrictions on mineral development and livestock grazing could have adverse impacts on prices and availability of food and household products. These impacts would disproportionately affect low-income environmental justice populations due to food and household products purchases making up a larger percentage of the disposable income and fewer alternative resources available.

Id. at 10-37.

Even Alternative 6—which is nowhere near as restrictive as Alternative 3 but nonetheless contains ACECs—would lead to severe economic impacts. It would result in "about $3.1 million to $63.6 million less in total labor income" and "about $193 million to $419 million less in economic output (about $241 million to $366 million less in direct economic output) than under Alternative 1" annually. *Id.* at 10-32 to 10-33. Because there would be a "decrease in projected oil and gas activity" under Alternative 6, "royalty revenue, severance tax revenue, oil and gas conservation tax revenue, and ad valorem taxes combined are expected to be about $50 million less than under Alternative 1" in Wyoming alone. *Id.* at 10-33. "The reductions in tax revenues could put strain on local governments' budgets and could impact public services that are offered to the communities." *Id.*

All these are just the direct economic impacts. Although BLM attempts to account for both direct and indirect impacts to jobs, *see, e.g.*, *id.* at 10-32, the agency does not fully consider the chain of secondary economic opportunities (vendors, hotels, rentals, restaurants, service workers, and a host of other service industries and contractor jobs) that the oil-and-gas industry both sparks and depends on—none of which would be possible under Alternative 3. If BLM wants to sustain public trust in the federal decision-making process, then in no case should it choose a development-limiting alternative like Alternative 3.

IV. CONCLUSION

Thank you for considering Anschutz's comments on BLM's Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement. Anschutz respectfully requests that BLM account for all comments submitted by Anschutz, other members of the oil-and-gas industry, other energy and mineral developers, energy-producing states, and communities whose livelihood depend on the oil-and-gas industry.

Sincerely,

Joseph DeDominic
President and CEO

June 13, 2024

Submitted electronically via: EplanningUi (blm.gov)

Greg Sheehan
State Director
Bureau of Land Management
Utah State Office
440 West 200 South, Suite 500
Salt Lake City, Utah 84101

Subject: Greater Sage-grouse Land Use Plan Amendments
DOI-BLM-WO-2300-2022-0001-RMP-EIS

Dear Director Sheehan:

Wayne County appreciates the opportunity to comment on has reviewed the Bureau of Land Management's ("BLM") Draft Resource Management Plan Amendment ("DRMP") and Draft Environmental Impact Statement ("DEIS") for greater sage-grouse. The County supports the BLM's selection of alternative 5 as the "preferred alternative". This alternative provides the most reasonable and balanced approach presented by the BLM. The other alternatives provide a management framework that is unacceptable to the County.

The size and complexity of the DRMP makes it difficult for small rural counties to participate in the planning process. Additionally, BLM has not meaningfully involved the county as a cooperating agency and has left the county to piece together how this management planning decision will affect the health, safety, welfare, and economy of the County.

Wayne County encourages the implementation of multiple use and sustained-yield management principles of public lands.[1] The people are best served when federal land management agencies allow the public, both local and regional, to utilize the abundant resources found in the mountains, valleys, and deserts of Wayne County. Wayne County asks the BLM to select alternative 5 as presented in the DRMP as it would allow the most flexibility livestock grazing, active federal land management, and potential development.

[1] *See* Wayne County-Public Lands Resource Management Plan at 18.

Wayne County has concerns about the BLM's approach to predator management. Ravens, crows, and magpies have a significant and direct impact on Sage grouse populations on Parker Mountain, one of Utah's most robust sage grouse populations. The Wayne County Resource Management Plan calls for "State and Federal wildlife and land management agencies to conduct a regional study to determine the extent of detrimental effects of increased raven population on the Parker Mountain Sage Grouse and recommend measures to offset these detrimental effects."[2] The County also asks for the following management prescriptions to be selected in the final decision.

First, the County wants to ensure that the BLM will continue to collaborate with appropriate state agencies, and other landowners and managers in their efforts to minimize impacts from predators on sage grouse. Those efforts should be allowed to continue unrestrained. State and local governments should be allowed to carry out predator mitigation efforts on behalf of sensitive species such as Sage Grouse. Second, each of the alternatives allows for potential management *in the event* ravens are identified as an issue. However, it would be far more efficient and effective to proactively develop a comprehensive plan for predator control throughout the range, with assurances and deference to each agency already involved (DWR, FWS, APHIS, FS, BLM, etc.). This should include a cooperating agreement with all involved agencies (including APHIS, USFWS, Department of Agriculture, BLM, Forest Service, and state wildlife agencies) to ensure the involvement of all interested agencies and minimize delay in implementation. Requiring individual response plans in each instance of decline will result in significant delays in implementation, to the detriment of affected sage-grouse.

Finally, the County is concerned that the DRMP will create restrictions that will restrict utilities on the Northern End of the Parker Mountain population. Please include exclusions for power, gas, and fiber optics should the BLM decide to manage this area to prevent these forms of development. Thank you for considering the County's comments. Please call with any questions.

Sincerely,

Commission Chair
Roger Brian

[2] Wayne County RMP at 183.

Felicia Snow
Wayne County Clerk/Auditor
18 S Main, Box 189
Loa, UT 84747-0189

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Greg Sheehan
State Director
Bureau of Land Management
Utah State Office
440 W. 200 S, Suite 500
Salt Lake City, UT. 84101

Received
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Bureau of Land Mgmt UTSO

84101-143425

Lake County Board of Commissioners
513 Center Street
Lakeview, Oregon 97630
(541) 947-6003
Fax: (541) 947-5775

Barry Shullanberger, Commissioner
James Williams, Chair
Mark Albertson, Vice-Chair

June 10, 2024

Subject: Greater Sage-grouse 2024 Draft Resource Management Plan Amendment /Environmental Impact Statement Comments

The Lake County Board of Commissioners would like to express our support of Alternative 5 of the Draft Resource Management Plan Amendment (RMPA)/Draft Environmental Impact Statement for greater sage-grouse habitat. The following are a few of the reasons for our support of Alternative 5:

- Renewable Energy Development and Associated Transmission—areas that are determined to be non-habitat or unsuitable to sage-grouse and lacks potential to become marginal or suitable habitat should have the eligibility to be analyzed for renewable energy development. As the need for renewable energy is increasing and the valuable private land availability for such projects are decreasing, BLM lands matching these criteria should be considered for further analysis and development of renewable energy projects.
- Minimizing Threats from Predation—the County feels that Predation is a big problem with GRSG reduced numbers, and would like to support the plan where the BLM is not increasing opportunity for predators to move into habitat areas. Any opportunities to reduce raven and raptor perching and nesting should be considered.
- Livestock Grazing—The County supports livestock grazing on all BLM lands and the presence of GRSG should not affect whether an area is available for livestock grazing. We feel that adjustments if needed, should be accomplished at the local level with BLM managers and livestock producers to determine whether appropriate implementation-level planning, such as adjusting AUM's, timing, intensity duration, and frequency of grazing are completed at an allotment scale based on site specific conditions. When desired conditions are not met, allowing an alternative approach if terms and conditions do have the desired intent, should always be the next best management option versus removal of livestock.
- Travel and Transportation Management—Lake County does have a designated sand dune recreational vehicle area. We want to continue to see that designation as it currently exists without further limitations. Recreation on the sand dunes is important to our local businesses near the area and an opportunity for people to enjoy public lands while doing so within the designated area.

- Special designations—The County Commissioners appreciate that ACEC management would be unchanged with Alternative 5. The County does not support ACEC's in general, as it is an overreach of management restrictions on BLM lands. Any future protection of GRSG areas should be handled at the local level, and not given ACEC designation.

In closing, Alternative 5 considers options with fewer restrictions on resources and provides more opportunities compensatory mitigation to offset impacts on GRSG and its habitat. Alternative 5 also allows the BLM to select the best strategy for various GRSG habitat management actions. Lake County Commissioners support multiple use and sustained yield on public lands and Alternative 5 aligns with state and local plans and policies possible.

Sincerely,

Barry Shullanberger
Commissioner

James Williams
Chairman

Mark Albertson
Vice Chair

UINTAH COUNTY

STATE OF UTAH
152 EAST 100 NORTH
VERNAL, UTAH 84078
435-781-0770

COMMISSIONERS:
John Laursen
Brad Horrocks
Sonja Norton
ASSESSOR – Barbara Simper
ATTORNEY – Jaymon Thomas
CLERK-AUDITOR – Mike Wilkins
RECORDER – Brenda McDonald
TREASURER - Wendi Long
SHERIFF – Steve Labrum
SURVEYOR - Brock Slaugh

June 12, 2024

U.S. Department of the Interior
Bureau of Land Management

RE: DOI-BLM-WO-2300-2022-0001-RMP-EIS Greater Sage-Grouse Daft Resource Management and Environmental Impact Statement

Dear Bureau of Land Management Staff:

We, the elected officials of Uintah County, Utah appreciate the chance to comment on the proposed Greater Sage-Grouse Draft EIS noted above. Uintah County believes that the 2019 ARMPA, as it applies to Utah, is sufficient and that the steps that have been taken by the State of Utah and the Counties within the state are working. Having said that, we would prefer Alternative 2 in the Draft EIS, however, we also feel that the preferred alternative, Alternative 5, is the next best option as long as there are not significant changes when the final plan is drafted. We will do our best to outline the reasons for our position.

Uintah County has been working with the State of Utah, Fish and Wildlife, and the BLM on protecting Sage-Grouse for almost a decade. The steps that have been taken in Uintah County are working and the numbers are improving. In general if something is working, why would one want to change it? Alternatives 3 and 4 in the Draft EIS are way too restrictive and would tie up too much land thus defeating or greatly hindering the BLM's charge for multiple use. Alternative 2 is our preferred option and alternative 5 we believe is the next best option that we could support, as long as there are not significant changes when the final plan is drafted.

Uintah County has adopted a Resource Management Plan as part of our General Plan. The Resource Management Plan can be found here:
https://cms1files.revize.com/uintahcountyut/document_center/CommunityDevelopment/Res%2008-12-2019%20R1-%20Uintah%20Resource%20Management%20Plan-%20CC%20Approved.pdf

The plan contains objectives and policies that are related to Sage-Grouse management. Federal Plans are required to follow local plans to the maximum extent possible in accordance with federal law. The sections that apply to Sage-Grouse and the proposed RMP Amendment are as follows:

13.3.1 Discourage or eliminate land use restrictions or special designations that restrict economic growth and activity, especially on federal lands.

13.3.9 BLM and USFS should produce planning documents consistent with state and local land use plans to the maximum extent consistent with federal law and FLPMA's purposes, by incorporating the county's and state's land use planning and management program for the subject lands that preserve traditional multiple use and sustained yield.

13.3.11 In general, objectives of special designations can be met by well-planned and managed development of natural resources. For this reason, no special designations shall be proposed until the need has been determined and substantiated by verifiable scientific data available to the public. Furthermore, it must be demonstrated that protection cannot be provided by other means and that the area in question is truly unique compared to other area lands.

13.3.14 Uses in the areas surrounding the John Wesley Powell National Conservation Area shall not be affected by the conservation area, even when such uses can be seen or heard within the conservation area. Uintah County supports multiple use on all state and federal lands.

21.4.19 Uintah County supports conservation projects for Sage Grouse within the John Wesley Powell National Conservation Area in accordance with State and Federal Sage Grouse Plans. Projects may include vegetation management by natural or mechanical means.

26.4.3 It is the policy of Uintah County that Greater Sage-grouse shall be managed in accordance with the Conservation Plan for the Greater Sage-grouse in Utah, as implemented by the State of Utah, with the map of the Uintah Sage-Grouse Management Area, included in the appendix, and incorporated by reference, as it applies to those portions of the Uintah Sage-grouse Management Area within Uintah County.

26.4.16 Federal land management decisions should be coordinated with state wildlife management agencies and should support state-sponsored initiatives or programs designed to stabilize wildlife populations that may be experiencing a scientifically proven decline in numbers.

26.4.22 All federal or state wildlife management agencies shall coordinate with the county before establishing regulatory measures associated with wildlife that could impact energy development.

26.4.24 Uintah County recognizes the use of the John Wesley Powell National Conservation Area for Sage Grouse habitat.

Based on the above information Uintah County supports alternatives 2 and 5 of the Draft EIS as long as they are not changed significantly by the final rule. Since Uintah County has been involved with protecting the Greater Sage-Grouse we have seen numbers increase and areas where these species are flourishing.

Thank you for your review of our comments. We appreciate the opportunity to work with the BLM on this issue. Please let us know if you have any questions or if you need additional clarification.

Sincerely,

John Laursen, Chairman

Brad Horrocks

Sonja Norton

Uintah County Commissioners

WESTERN ENERGY ALLIANCE

Submitted via www.regulations.gov

June 13, 2024

Patricia Deibert
National Sage-Grouse Conservation Coordinator
Bureau of Land Management, Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South, Suite 500
Salt Lake City, UT 84101

Agency Docket Number: BLM_HQ_FRN_MO4500174493

Re: Western Energy Alliance's Comments on the Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement

Dear Ms. Deibert:

Western Energy Alliance (Alliance) is concerned that the Bureau of Land Management's (BLM) Draft Resource Management Plan Amendment and Environmental Impact Statement (DRMPA/EIS) regarding management of the greater sage-grouse (GrSG) fails to effectively balance multiple uses as required under BLM's multiple use and sustained yield mandate. In proposing to amend 77 existing RMPs across 121 million acres of BLM-administered public land, 69 million acres of which are GrSG habitat in a single plan, BLM is improperly conducting centralized planning in violation of its own regulations and congressional direction in the Federal Land Policy and Management Act (FLPMA) regarding state and local planning. As a consequence, BLM runs roughshod over the important and effective work that states and localities have done over many decades to protect GrSG and its habitat. The Alliance appreciates the opportunity to comment and requests that BLM go back to state-specific planning, as most successfully done with the 2019 plan updates. The Colorado Oil and Gas Association (COGA) and West Slope COGA join the Alliance in support these comments.

The Alliance is concerned that each of the alternatives considered in the DRMPA/EIS, other than consideration of the 2015 plan and the 2019 plan, include components that cede BLM's authority over its statutory multiple-use management mandate, remove necessary flexibility at the state, local and project levels, and provide management for only one use—preservation of GrSG and its habitat—in contravention of FLPMA, the National Environmental Policy Act (NEPA), and the Administrative Procedure Act (APA). BLM must provide an actual multiple-use alternative that provides a flexible

approach to GrSG management, including flexibility related to oil and natural gas development, and other public uses such as livestock grazing, mining, recreation, and renewable energy development.

Significantly, as discussed in further detail below, there are portions of Alternatives 3, 4, 5 and 6 that are unworkable and should be removed or significantly revised. As consistently expressed by multiple Alliance comment and protest letters throughout BLM's GrSG land use planning efforts, BLM must ensure that it manages GrSG and its habitat within its multiple-use and sustained yield mandate, consistent with statute, and in collaboration with states and the recommendations of their wildlife management agencies. BLM cannot impose overly arbitrary, unsupported, unduly unreasonable and burdensome management prescriptions and restrictive measures across the GrSG range that prohibit other uses, such as oil and natural gas development, and the rights-of-way and infrastructure necessary to power our nation.

Interests of the Alliance

The Alliance is the leader and champion for independent oil and natural gas companies in the West. Working with a vibrant membership base for over 50 years, the Alliance stands as a credible leader, advocate, and champion of industry. Our expert staff, active committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all. Most independent producers are small businesses, with an average of fourteen employees.

Members of the Alliance explore for and develop oil and natural gas resources on BLM-managed public lands and adjacent state and private lands across the West, including in GrSG habitat. Alliance members are leaders in their communities, developing and implementing best management practices for the benefit of the GrSG and other species that rely on the sagebrush sea. Since before BLM initiated its first GrSG plan amendments, Alliance members were incorporating avoidance and minimization efforts into their planning processes, and have been continually pioneering and perfecting restoration methods to reduce impacts and improve GrSG habitat. Recent studies show the benefit of industry's reclamation and rehabilitation efforts on plant and insect diversity, improving GrSG habitat beyond historical sagebrush stands.[1] Additionally, technological innovation and improvements to operational efficiency continue to reduce industry's footprint on the landscape while also reducing drilling and completion

[1] Piceance Basin Restoration for Wildlife: Technical Publication Colorado Parks and Wildlife Technical Report No. 57, D.B. Johnston, 2020; "Insect abundance and diversity respond favorably to vegetation communities on interim reclamation sites in a semi-arid natural gas field," M.F. Curran et al., *Land*, *11*(4), 2022, p.527.; "Reclaimed sites in the Jonah Field show promising insect populations," Caitlin Tan, Wyoming Public Media, January 6, 2023; "Study finds Wyo gas fields abuzz with invertebrates," Mike Koshmrl, WyoFile, January 10, 2023.

times, resulting in less impacts to GrSG. Advanced horizontal drilling and hydraulic fracturing has resulted in a 70% reduction in the footprint of oil and natural gas on the land and reduced habitat fragmentation.[2]

Yet many of the provisions contained in the GrSG DRMPA/EIS will have a significant impact on Alliance members' business planning and operations by increasing operational costs, delaying project timeframes, and limiting or precluding operations in certain areas, including limiting their ability to develop their valid existing lease rights.

The Alliance has been participating in the GrSG planning process since BLM initiated the land use plan amendment process over a decade ago. The Alliance provided comments and formal protests on December 2, 2013, January 29, 2014, February 5, 2014, March 24, 2014, and June 29, 2015 for the 2015 RMPAs, and incorporates by reference those letters in full. Based on BLM's overly restrictive measures, in violation of FLPMA, the Mineral Leasing Act (MLA), NEPA, and APA, the Alliance filed suit in the U.S. District Court for the District of North Dakota against BLM to protect industry's rights. *See Western Energy Alliance v. Jewell*, Case No. 1:16-cv-00112.

The Alliance again provided comments on BLM's planning process leading to the 2019 RMPAs. In a series of letters submitted on each state Draft RMPA on August 2, 2018, the Alliance reiterated requests for BLM to align its plans with state-led conservation and management plans. In the case of the Wyoming Draft RMPAs, the Alliance supported many of the proposals that more closely aligned with that state's own plan. The Alliance here incorporates those letters by reference in full. Unfortunately, the 2019 plans were never implemented based on an U.S. District of Idaho court order enjoining the 2019 plans.

In response to BLM's efforts following the court's decision on the 2019 plans, the Alliance again provided comments on BLM's 2020 GrSG Draft Supplemental EIS on May 15, 2020, as incorporated by reference herein, further explaining best practices in the oil field that benefit GrSG and its habitat.[3]

On February 8, 2022, the Alliance provided comments on BLM's GrSG planning process, this time on BLM's notice of intent to once again amend the RMPs for GrSG. As reiterated in the Alliance's 2022 letter, incorporated in full herein by reference, the Alliance remains concerned with BLM's continued consideration of and modification to:

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[2] "Oil and gas impacts on Wyoming's sage-grouse: summarizing the past and predicting the foreseeable future," Dave H. Applegate and Nick L. Owens, *Human-Wildlife Interactions Vol. 8 No 2*, 2014, p. 284-290.

[3] See the discussion in Attachment D of the Alliance's May 15, 2020 comments titled "Summary of Improvements in Oil and Gas Technology and Best Practices that have Reduced Overall Impacts to Greater Sage-Grouse in the Pinedale Planning Area of Wyoming."

- Priority and general habitat management area (PHMA/GHMA) designations
- Areas of Critical Environmental Concern (ACEC)
- Lek buffers and disturbance and density caps
- Compensatory mitigation and net conservation gain requirements
- Adaptive management
- Leasing prioritization
- Waivers, exceptions, and modifications
- Underlying science justifying the plans.

Additionally, as explained in further detail below, the Alliance once again urges BLM to recognize and defer to state management plans. Before BLM initiated its first GrSG planning process, many of the western states were already managing for the protection and preservation of GrSG and its habitat, including developing and implementing plans that have consistently benefited GrSG while allowing multiple uses, and which have avoided the multiple legal challenges that BLM's plans have faced.

History of the Alliance Defending Industry's Interests in GrSG Litigation

The Alliance has been actively involved in BLM's GrSG initiatives since at least 2008 and has always endeavored to collaboratively engage with BLM on this important issue and serve as a resource in providing BLM with substantive, technical data and information to help inform BLM's formulation of workable management prescriptions and decision making. The Alliance has actively defended numerous BLM decisions related to GrSG that have been and still are subject to legal challenges and on-going litigation and appeals.

For example, in 2014, the Alliance filed a legal challenge under the Freedom of Information Act, seeking information regarding whether BLM was relying on the best available science in its planning process.[4]

On April 7, 2016, the Alliance intervened in a legal challenge brought by Western Watersheds Project (WWP) and other organizations in February of 2016. WWP's suit challenged certain provisions of the 2015 plans (Idaho GrSG Lawsuit).[5] As a Defendant-Intervenor, the Alliance sought to defend portions of the plan challenged by WWP and other groups.

[4] *Western Energy Alliance v. U.S. Fish & Wildlife Serv.*, 13-cv-02811, U.S. Dist. Court, Dist. of Colorado.
[5] *Western Watersheds Project et al. v. Schneider*, 1:16-cv-00083, U.S. Dist. Court, Dist. of Idaho.

On May 12, 2016, the Alliance filed a separate lawsuit against the Department of the Interior, BLM, and the U.S. Forest Service, raising a challenge to portions of the decisions to approve the RMPAs related to the 2015 plans as contrary to law.[6]

Although the Alliance initially brought suit in federal district court for the District of North Dakota, the North Dakota court, over the Alliance's objection, severed its challenge and transferred portions to several other courts, including federal district courts in the Districts of Utah, Idaho, and D.C.[7] The portions of the Alliance North Dakota challenge that were transferred to Idaho were consolidated with the Idaho GrSG Lawsuit brought by WWP.

Shortly after these transfers, in January of 2017, the administration changed hands, and on June 7, 2017, the new Secretary of the Interior issued Secretarial Order No. 3353, which directed the BLM to review the 2015 plans to ensure they adequately complemented state efforts to conserve the species. The courts in Idaho, Utah, and D.C. stayed these cases on the request of the parties to allow BLM to review the plans and issue new decisions. The Alliance remains a party to all three cases, and intends to pursue its claims in these matters once final decisions are entered on the 2024 planning process.

Since the stay in 2017, the Alliance has continued to invest resources to defend its interests in portions of BLM's decisions challenging the Idaho Litigation. As a result of the planning process begun pursuant to Secretarial Order No. 3353, WWP Plaintiffs filed an amended complaint in the Idaho matter, and sought a preliminary injunction to prohibit BLM from implementing the 2019 plans. The Alliance joined numerous other defendant-intervenors in opposing this injunction, but the Idaho court granted Plaintiffs' relief in October of 2019 and ordered BLM to reimplement the 2015 plans. The Alliance agreed to stay its still-pending claims defending portions and challenging other portions of the 2015 plans pending BLM's continued re-analysis of its decision. The Alliance intends to pursue its claims in the Idaho matter, and reserves the right to amend its complaint to add any additional claims related to the present planning process.

The Alliance has also intervened in numerous challenges brought by WWP and others seeking to cancel BLM decisions to offer oil and natural gas parcels for competitive sale based on those plaintiffs' allegations that BLM has not adequately protected GrSG in reaching those decisions. As a Defendant-Intervenor, the Alliance has defended BLM's analysis of the impacts of GrSG in connection with these

[6] *Western Energy Alliance, et al. v. U.S. Dept. of the Interior*, 1:16-cv-00112-DLH-CSM, U. S. Dist. Court, Dist. of N. Dakota.
[7] *See, e.g. Western Energy Alliance v. U.S. Dept. of the Interior*, 1:16-cv-02482-EGS, U.S. Dist. Court, Dist. of Columbia; *Herbert, et al. v. Jewell*, 2:16-cv-01267, U.S. Dist. Court, Dist. of Utah.

leasing decisions.[8] This includes pursuing appeals of district court decisions finding that BLM's analyses were insufficient.[9] The Alliance's continued legal involvement in litigation regarding the GrSG planning process is further evidence to its commitment that BLM follow the law.

BLM's Governing Legal Framework for Land Use Planning

As a foundational matter, it is important to understand BLM's governing legal framework with regard to land use planning and its direction from Congress to manage its lands for multiple use and sustained yield for present and future generations. Under this direction, BLM cannot, through the GrSG DRMPA/EIS, manage the entirety of the sagebrush sea, covering over 69 million acres and 10 states solely or almost exclusively for the preservation and protection of the GrSG and its habitat. This approach is contrary to Congress' intent in enacting FLPMA.

Federal Land Policy and Management Act

Land Use Plan Requirements

FLPMA is the organic statute for BLM management of public lands. Under FLPMA, BLM is required to manage public lands under the principles of multiple use and sustained yield, in accordance with applicable land use plans, to meet the needs of present and future generations. 43 U.S.C. 1701(a)(7), (8) & (12); 43 U.S.C. § 1732 (a) & (b); 43 C.F.R. § 1610.5-3. FLPMA does not require beneficial impacts to resources, rather it mandates that the Secretary "prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b).

Significantly, FLPMA identifies mineral exploration and production as one of the "principle or major uses" of public lands. 43 U.S.C. § 1702(l). Furthermore, FLPMA emphasizes the importance of public resources to the United States domestic energy supply and contains an express declaration of Congressional policy that BLM manage public lands "in a manner which recognizes the Nation's need for domestic sources of minerals, [and other commodities] from the public lands. 43 U.S.C. § 1701(a)(12). FLPMA's definitions of multiple use and the major uses of public lands highlight the on-going utilization of natural resources on public lands for the benefit of the American people. 43 U.S.C. § 1702(c).

[8] *See, e.g. Western Watersheds Project v. Zinke*, 1:18-cv-187, U.S. Dist. Ct., Dist. of Idaho; *Montana Wildlife Fed. v. Bernhardt*, 18-cv-69, U.S. Dist. Ct., Dist. Montana; *Dakota Resource Council v. U.S. Dept. of Interior*, 22-cv-1853, U.S. Dist. Ct. Dist. of Columbia.
[9] *See, e.g. Western Watersheds Project v. Zinke*, No. 20-35297, U.S. Court of Appeals for the Ninth Circuit, *Montana Wildlife Federation v. Zinke*, No. 20-35609 (consol.) U.S. Court of Appeals for the Ninth Circuit.

Discretion in Land Use Plans

Congress provided the Secretary of the Department of the Interior (Secretary) with significant discretion and authority to "manage the public lands under principles of multiple use and sustained yield." 43 U.S.C. § 1732(a). Judicial precedent recognizes the Secretary's broad grant of discretion under FLPMA to achieve the statutory goal of managing federal lands under the principles of multiple use and sustained yield. *See Norton v. S. Utah Wilderness Alliance,* 542 U.S. 55, 66 (2004) (BLM has "a great deal of discretion" in deciding how to achieve FLPMA obligations); *Theodore Roosevelt Conservation P'ship v. Salazar*, 616 F.3d 497, 518 (D.C. Cir. 2010) ("The Bureau has substantial discretion to decide how to achieve the multiple use and sustained yield objectives."); *Or. Natural Desert Ass'n v. BLM*, 531 F.3d 1114, 1135 (9th Cir. 2008) (BLM's "wide authority" to manage public lands "allows it ample discretion").

Valid Existing Rights

Pursuant to FLPMA, BLM is obligated to recognize valid existing lease rights. 43 U.S.C. § 1701 note (h) ("All actions by the Secretary concerned under this Act shall be subject to valid existing rights."); *see also* 43 C.F.R. § 1610.5-3(b); BLM Manual 1601.06G ("All decisions made in land use plans, and subsequent implementation decisions, will be subject to valid existing rights."). Valid existing rights are not pre-empted, or otherwise excused, by BLM's future determinations for resource protection. Pursuant to federal statute, BLM cannot terminate, modify, or alter valid existing property rights. *Id.*

Oil and natural gas leases are contracts between the federal government and private parties, which provide the private lessees the right to explore for, produce, and sell, a mineral. This binding contract governs the development of the leased minerals. *Mobil Oil Exploration & Producing S.E., Inc. v. United States*, 530 U.S. 604, 607–08 (2000). Subsequent action by BLM is controlled by the terms of the contract, and lessees are entitled to the "right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of the leased resource in a leasehold . . . ." 43 C.F.R. § 3101.1-2.

Valid existing rights override subsequent land use proposals such as ACECs, lands with wilderness characteristics and other land use or resource designations. Indeed, federal courts and the Interior Board of Land Appeals (IBLA) have consistently held that operators may develop their existing leases within later designated areas of special emphasis if BLM issued their leases prior to the enactment of FLPMA or the special designation. *See, e.g., Colorado Environmental Coalition v. Bureau of Land Management*, 932 F. Supp. 1247, 1251 (D. Colo. 1996); *Colorado Environmental Coalition*, 135 IBLA 356, 359-360 (1996); *SUWA*, 100 IBLA 63 (1987); *Utah Wilderness Coalition*, 91 IBLA 124, 125, 130 (1986).

Federal courts have interpreted valid existing rights to mean that federal agencies cannot impose stipulations or conditions of approval that make development on existing leases either uneconomic or unprofitable. *See Utah v. Andrus*, 486 F. Supp. 995, 1011 (D. Utah 1979). BLM cannot prohibit lessees from developing their leases. *Nat'l Wildlife Fed.*, 150 IBLA 385, 403 (1999). Only Congress has the right to completely prohibit development once a lease has been issued. *W. Colorado Congress*, 130 IBLA 244, 248 (1994).

Energy Policy Act of 2005

Section 363 of the Energy Policy Act of 2005 (Energy Policy Act) requires BLM to ensure lease stipulations are "only as restrictive as necessary to protect the resource for which the stipulations are provided." 42 U.S.C. § 15922(b)(3)(C).

BLM guidance reiterates the Energy Policy Act's mandate. BLM Handbook 1624-1, titled "Planning for Fluid Mineral Resources," instructs BLM to identify problems with existing management decisions, analyze effects of multiples stipulations, and ensure that "the least restrictive stipulation that effectively accomplishes the resource objectives" be used. BLM Handbook 1624-1 at III-11. When developing an RMP, BLM should specifically "provide evidence that less restrictive measures were considered but found inadequate to provide effective protection for other land uses or resource values." *Id.* at III-14.

Mineral Leasing Act of 1920

Pursuant to the MLA, and the applicable lease terms, BLM and lessees are both legally obligated to avoid waste of leased, public oil and natural gas resources. Under Section 16 of the MLA, 33 U.S.C. § 225, an oil and natural gas lessee is required to prevent waste of leased minerals in order to maximize the economic benefit to the lessor. *See generally* BLM Form 3100-11 § 4 ("Lessee . . . must prevent unnecessary damage to, loss of, or waste of leased resources."). Similarly, BLM's regulations regarding onshore oil and natural gas operations mandate that the lessee "maxim[ize] [the] ultimate economic recovery of oil and gas with minimum waste . . . ." 43 C.F.R. § 3162.1(a).

Federal oil and natural gas leases grant the lessee the exclusive right and obligation to explore for and develop the federal fluid minerals, including the use of federal surface to develop these minerals. Specifically, this BLM regulation states that a lessee shall have the right to use "the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold . . . ." 43 C.F.R. § 3101.1-2.

BLM Failed to Provide Adequate Time for Public Review and Comment in Violation of FLPMA and the Administrative Procedure Act; Additional Public Comment Period Required

FLPMA requires federal agencies to provide adequate notice and opportunity to comment on land use plan amendments and revisions. 43 U.S.C. § 1712(f); 43 C.F.R. § 1610.2(a). Similarly, the APA requires both notice and the opportunity to comment when an agency proposes a substantive rule. 5 U.S.C. § 553.

Comment 1: The GrSG DRMPA/EIS presents thousands of pages of complex, overlapping, and confusing proposed management prescriptions that are not presented in any coherent or user-friendly manner. While BLM provides an overview of existing management direction in Appendix 2 according to the 2015 and 2019 plans, the cross-reference to proposed changes by alternative number does not provide actual reference to the potential substantive plan modifications. Instead, Appendix 2 provides more than 750 additional pages of confusion.

To compound matters exponentially, Chapter 2 of the GrSG DRMPA/EIS presents a myriad of overlapping, interlocking, or mutually exclusive management prescriptions that in turn are based on a variety of indicators, benchmarks, and criteria that are defined, if at all, in various Appendices (e.g., the Habitat Assessment Framework (HAF) in Appendix 8) and/or some of the more than 300 new studies that BLM apparently has relied upon to formulate such a byzantine management plan. BLM has not afforded the public and interested stakeholders sufficient time to perform an adequate review and provide substantive, meaningful comments on the GrSG DRMPA/EIS.

The American Petroleum Institute (API) has conducted an extensive scientific review of the HAF and the quality of science BLM is using in the GrSG DRMPA/EIS. API's work also highlights how much of the science BLM is relying on is insufficiently peer-reviewed beyond a very insular group of scientists within the U.S. Geological Survey (USGS) and U.S. Fish and Wildlife Service (FWS). The insularity of this group has caused the government to ignore studies that run counter to the narrative it is trying to create in the DRMPA/EIS. The Alliance incorporates by reference API's comments, particularly as they relate to the deficiencies of the science BLM is relying upon and the technical details of novel concepts introduced in the DRMPA/EIS.

Comment 2: The GrSG DRMPA/EIS presents new science and technical studies that have not been made available for peer review, or public review and comment. The GrSG DRMPA/EIS relies on a myriad of new scientific studies, and only cites to an abstract from the USGS. *See* GrSG DRMPA/EIS Section 1.2.3 (citing Teige, et al., Annotated Bibliography of Scientific Research on Greater Sage-Grouse Published

from October 2019 to July 2022 (November 2023); Carter, et al. Annotated Bibliography of Scientific Research on Greater Sage-Grouse Published from 2015 to 2019 (2020)).

Significantly, the Teige, et al. 2023 abstract covers over 147 new studies that BLM incorporated to promulgate the GrSG DRMPA/EIS. Similarly, the Carter, et al. 2020 USGS Report covers over 169 publications and studies regarding the GrSG and its habitat. Yet, the GrSG DRMPA/EIS makes no effort to explain which specific studies BLM relied upon from these 316 studies documented by the USGS to formulate new management prescriptions or otherwise inform its substantive decision-making. As a result, while BLM states that it is utilizing new science, it does so in a black box, to the detriment of the public. Indeed, BLM's failure to explain how, where, and why it used this new science violates the APA and FLPMA's requirement for providing adequate review and comment.

Stakeholders such as the Alliance need additional time to review and analyze these studies. The government needs more time to perform adequate scientific peer review to inform comments, recommendations, and additional technical information for presentation to BLM before the GrSG DRMPA/EIS is finalized.

Indeed, by limiting public review and comment, BLM is violating the APA and NEPA by not affording sufficient time for stakeholders. This failure is similar to the legal errors found by the U.S. district courts for the districts of Montana and Idaho in the context of BLM's truncated public review and comment periods for BLM competitive oil and natural gas lease sales that offered certain parcels for sale containing GrSG habitat. *See Montana Wildlife Federation v. Haaland*, Case No. 4:18-cv-00069; *Western Watersheds Project v. Haaland*, Case No. 1:18-cv-00187.

Comment 3: BLM ignores recent scientific research that shows how the impact of modern oil and natural gas development on GrSG is largely mitigated by new technologies, regulation, and reclamation. When BLM does cite to some of these papers in the DRMP/EIS, BLM cites them in a way that supports a narrative that oil and natural gas have significant and largely unmitigable, population-level impacts on GRSG, while ignoring findings in the cited papers that contradict that view.[10] BLM's biased discussion of the scientific literature is further compromised by reliance on papers that find impacts based on

[10] Applegate and Owens 2014; Johnston 2020; "Wyoming sage-grouse working groups—Lessons learned," Christiansen et al., *Human-Wildlife Interactions*, Winter 2017; "A simulation framework for assessing physical and wildlife impacts of oil and gas development scenarios in Southwestern Wyoming," S.L. Garman, *Environmental Modeling and Assessment*, June 2017; "Probability of lek collapse is lower inside sage-grouse core areas—Effectiveness of conservation policy for a landscape species," E.S. Spence et al. *PLoS ONE,* November 9, 2017; "Patterns of nest survival, movement and habitat use of sagebrush-obligate birds in an energy development landscape," C.P. Kirol, Dissertation, University of Waterloo, 2021; and "Resource selection by greater sage-grouse varies by season and infrastructure type in a Colorado oil and gas field," B.L. Walker, *Ecosphere,* May 23, 2022.

outdated oil and natural gas technologies, practices, and regulations. These studies conflate drilling impacts with the production phase, which has much less impact. They also conflate impacts from additional types of energy development including solar, wind, coal and transmission lines.[11]

BLM fails to account for changes in drilling technology over the last 15 years and the reduction in *cumulative* effects from this technological change due to reduced disturbance and fragmentation. Further, though BLM includes the Applegate and Owens 2014 paper in the references, it does not include or cite the findings or reference the authors or anyone else who has tried to put oil and natural gas into context in Chapter 4: Environmental Consequences. There is no mention whatsoever of reduced cumulative effects due to horizontal drilling and multiple wells on a pad. Oil and natural gas development may decrease lek attendance, but that does not necessarily mean the population has declined. There is no mention of the 5% threshold and one feature per square mile that has been designed to protect sage-grouse in the Wyoming Executive Order (EO) or in the papers that have been published suggesting the EO is working. BLM has made no effort to define the extent and intensity of oil and natural gas impacts in a meaningful way, other than maps which show dots for wells. Those maps are dramatically not to scale. By use of the wrong scale, the maps suggest much higher impacts than those actually incurred.

Comment 4: The GrSG DRMPA/EIS does not meet BLM's science and data requirements under its own Land Use Planning Handbook and Information and Data Quality Guidelines, or under the requirements of the National Environmental Policy Act (NEPA). BLM Land Use Planning Handbook H-1601-1, Appendix D, p. 13; 40 C.F.R. § 1500.1(b); 40 C.F.R. § 1502.8. In developing a land use plan amendment, BLM cannot evaluate consequences to the environment, determine least restrictive lease stipulations, or assess how best to promote domestic energy development without adequate data and analysis. Here, however, the BLM failed to show whether it utilized any science or data at all to draft the proposed protective measures. Nor has BLM shown how the new restrictions will impact economic development.

Comment 5: BLM initiated this current stage of the GrSG planning process with a notice of intent and request for comments on a revised GrSG land use plan in November 2021, which the Alliance submitted comments on in February 2022. Since then, the Alliance has been patiently waiting over two years for the GrSG DRMPA/EIS. While BLM had these full two years to develop over 2,500 pages of planning-related documents, BLM is now affording the Alliance and other stakeholders only 90 days to review and comment on the proposed plan amendments. Ninety days is hardly sufficient to provide fulsome and

[11] "Greater Sage-Grouse Response to the Physical Footprint of Energy Development," C.P. Kirol et al., *Journal of Wildlife Management,* 2020.

substantive comments on each of the management prescriptions proposed to regulate oil and natural gas development within GrSG habitat.

Requested Action 1: BLM must withdraw the GrSG DRMPA/EIS and revise it to include citations to explain where, how, and why BLM used each of these new scientific studies on GrSG to develop the proposed management prescriptions in the GrSG DRMPA/EIS. After that update, BLM then needs to provide the public sufficient time to review, analyze and comment on the GrSG DRMPA/EIS and underlying studies.

Requested Action 2: Consistent with its March 28, 2024 letter, the Alliance respectfully requested an additional 180 days of public review and comment on the GrSG DRMPA/EIS and related materials and scientific technical information. BLM has had more than two years to develop the GrSG DRMPA/EIS yet affords the public only 90 days to review and attempt to provide substantive comments.

The GrSG DRMPA/EIS Unlawfully Imposes New Policies Without Explanation or Justification, and Implements New BLM Regulations Not in Effect at the Time of Issuance for Public Comment

The land use plan revision or amendment process under FLPMA is not a substitute for the APA's formal rulemaking process. The APA requires BLM to comply with formal rulemaking procedures when an agency proposes a substantive rule. *See* 5 U.S.C. § 533.

Moreover, it is well settled that when an agency changes positions, the APA requires it to (a) "display awareness that it is changing position;" (b) show that the new policy is permissible under governing statutes; (c) explain why the agency believes the new policy is better than the old one; and (d) "show that there are good reasons for the new policy," which requires a more detailed explanation where the "new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account." *Fed. Communications Comm'n v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009).

Comment 6: The GrSG DRMPA/EIS reflects that BLM imposed regulatory requirements not in effect at the time the GrSG DRMPA/EIS was issued for public review and comment. At best, these new regulatory requirements are presented as new policies in the Draft RMPAs at the time of issuance.

Requested Action 3: At a minimum, BLM needs to withdraw the GrSG DRMPA/EIS, update the document to specifically identify these new regulatory requirements, including appropriate legal citations, so that the public can be afforded a meaningful opportunity to review, analyze and comment upon the imposition and implementation of these new regulations.

Comment 7: BLM has not provided any explanation or otherwise shown why new regulations not yet in effect or even published in the Federal Register before the issuance of the GrSG DRMPA/EIS are appropriate or necessary for GrSG management.

Here, BLM has not met the legal requirements for the imposition of these new policies and regulations. For example, the GrSG DRMPA/EIS reflects entirely new management concepts and prescriptions related to landscape intactness and ecosystem resilience. It imposes new definitions of unnecessary and undue degradation in contradiction of FLMPA's standards. It incorporates new requirements for conservation and restoration and takes a new look at prioritization of ACECs. Some of these new management concepts and management prescription are contained in and imposed by BLM's new public land and conservation regulations that were published after the GrSG DRMPA/EIS was issued for public comment. "Conservation and Landscape Health," 89 Fed. Reg. 40,308 (May 9, 2024).

Comment 8: Other management concepts in the GrSG DRMPA/EIS are entirely new BLM policies not even proposed as draft rules, which represent a fundamental and dramatic policy shift in how BLM manages resources and habitats under its multiple use mandate under FLPMA. BLM fails entirely to meet the APA's legal requirements detailed by the U.S. Supreme Court which require BLM to explain these fundamental policy shifts and the imposition of new regulatory requirements to public stakeholders and regulated entities. BLM's GrSG DRMPA/EIS does not provide any explanation or justification for these new policies and requirements. *Fed. Communication Comm'n*, 556 U.S. at 515–16.

Comment 9: In the GrSG DRMPA/EIS, BLM: (1) does not display or otherwise present an awareness of its changing position; (2) does not demonstrate that these new policies and new regulations are permissible under FLMPA; (3) does not explain why these new regulatory requirements are better than the prior ones; and (4) does not provide any reasons or detailed explanations on the factual and technical findings that contradict BLM's prior management prescriptions and framework under the prior plans (e.g., 2015 and 2019 plans).

Comment 10: The primary alternatives in the GrSG DRMPA/EIS (Alternatives 3, 4, 5 and 6) present various management prescriptions that rely entirely on implementation of the Habitat Assessment Framework (HAF) which is ostensibly presented in Appendix 8. The HAF in turn presents a myriad of rigid and complex habitat indicators and benchmarks, and these indicators and benchmarks in turn present and impose a series of complex criteria for each that are mandatory for BLM and for public land users who must analyze a proposed action under them and ensure compliance.

This regulatory framework is unduly and unreasonably burdensome, and will not result in consistent or rational management as required under FLPMA's implementing regulations. Instead, this overly complex

regulatory framework will ensure subjective decision-making that is arbitrary, capricious, and abuses discretion in violation of the APA, FLPMA, and the resource use statutes that BLM is obligated to comply with, such as the MLA.

Comment 11: The HAF's indicators, benchmarks and criteria are utilized as formal regulations governing BLM decision-making and whether to authorize uses and development of public land. As a result, the HAF is a formal regulation, promulgated outside of BLM's governing regulations, and outside of the formal rulemaking process required under the APA.

For example, before an authorized action may be allowed to proceed, BLM and the project proponent must ensure and document that all of the relevant benchmarks and related criteria have been achieved and successfully implemented. This is a regulation, attempted to be disguised at best as a mandatory analytic framework that must be complied with in order for any public use of lands to proceed. The Alliance is struck by the impracticality of implementing this overly complex and convoluted HAF. BLM already struggles to meet statutory mandates under the Energy Policy Act of 2005 and the MLA to issue permits and conduct regular quarterly oil and natural gas leasing. How are BLM staff to navigate this convoluted new structure in any kind of systematic or consistent manner?

Requested Action 4: BLM must withdraw the HAF and withdraw the GrSG DRMPA/EIS and issue a Notice of Rulemaking for the HAF within BLM's regulations implementing FLPMA, MLA, and all other statutes that provide for use and development of public lands and public land resources (e.g., the Livestock Grazing Act and Mining Act).

Requested Action 5: BLM is legally required to withdraw the GrSG DRMPA/EIS and revise it to comply with BLM's statutory requirements under the APA to explain and justify its new polices and regulatory requirements. BLM must then afford the public sufficient time for review and comment so the public may provide substantive and meaningful comments to better inform BLM's decision-making on the management framework and prescriptions proposed.

The GrSG DRMPA/EIS Violates FLPMA's Land Use Planning Directives for Multiple-Use Management

FLPMA requires BLM manage the public lands "on the basis of multiple use and sustained yield" "in a manner which recognizes the Nation's need for domestic sources of minerals . . . from the public lands . . . ." 43 U.S.C. §§ 1701 (7) & (12). BLM's objective for resource management planning is to maximize resource values for the public through a "rational, consistently applied set of regulations and

procedures" while promoting multiple use management and providing for public participation. 43 C.F.R. § 1601.0-2.

Comment 12: The GrSG DRMPA/EIS is obtuse, illegible, arbitrary, capricious, and not in compliance with FLPMA and its implementing regulations. The GrSG DRMPA/EIS does not present a rational and consistent set of management prescriptions, procedures, or regulations for the multiple-use management of 77 federal land use plans covering over 121 million acres in 10 states.

Instead, the GrSG DRMPA/EIS presents a byzantine series of contradictory proposed management prescriptions instead of a rational, coherent, or consistent management framework. The GrSG DRMPA/EIS is not user-friendly for the public, or for BLM staff that will be tasked with implementing, administering, and managing the final plans.

While BLM attempts to present proposed changes between the 2015 plans, 2019 plans, and the 2024 draft, BLM fails to identify any specifics as to the proposed management prescriptions and restrictions under the 2024 draft. The charts in Appendix 2 merely note that there are changes contained in the relevant alternatives to the 2024 draft, but makes no effort to identify these changes, let alone provide citations to allow the public to cross-reference and identify these proposed changes.

Given the voluminous and confusing nature of the GrSG DRMPA/EIS and its multiple appendices, it is incumbent upon BLM to follow its statutory mandate under FLPMA and the APA to present coherent information to the public to allow for meaningful review and comment as well as enable BLM to deliberatively incorporate substantive comments and make appropriate changes.

Requested Action 6: BLM needs to revise the GrSG DRMPA/EIS and the charts presented in Appendix 2 to present a coherent, user-friendly matrix that will allow members of the public to better ascertain and understand the management prescriptions being proposed under each of the Alternatives, when these management prescriptions are applicable, and what additional indicators, benchmarks and criteria are also imposed and required for each management prescription (e.g., the requirements detailed in the HAF in Appendix 8).

The GrSG DRMPA/EIS Violates FLPMA's Mandate to Work with the States to Ensure Consistency

FLPMA requires that BLM work with state and local governments in the land use planning process in order to ensure consistency as well as to reduce conflict when such land use plans could have a significant impact on adjacent non-federal lands. As explained in FLPMA, BLM is required to:

> coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located . . . ; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials . . . in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. . . . Land use plans . . . shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of this Act.

43 U.S.C. § 1712(c)(9).

Comment 13: In the planning processes leading up to the 2015 and 2019 plans, BLM's draft RMPAs were broken out by state, providing clear and comprehensive understanding of what each alternative entailed, and ultimately, what management prescriptions were provided in the final plan. In this new version, the GrSG DRMPA/EIS provides a series of alternatives with charts and cross references, but no clear picture of what each of the 77 plans would ultimately entail, or how those plans align with, defer to, or entirely contradict what the relevant state plan is. It is hard to even navigate the GrSG DRMPA/EIS to determine what all the management prescriptions are by state, whereas with the 2015 and 2019 plans stakeholders in any one state could read a coherent plan for their state and comment on how they relate to the particular circumstances in that state.

Importantly, FLPMA requires BLM to confer with states and the local wildlife agencies where land use plans would have significant impacts on adjacent lands. Here, where BLM continues to impose disturbance and density caps, timing limitations, noise limitations, adaptive management requirements and compensatory mitigation requirements, among other restrictions, if BLM's guidance is not consistent with state management, it could drive oil and natural gas companies and other public land users to site projects on state or fee lands adjacent to federal lands just to avoid overly burdensome and restrictive measures. Indeed, in order to avoid the BLM restrictions, a company may site its disturbance on non-federal lands even where the better location from a habitat avoidance standpoint is the federal lands. BLM must ensure that its planning process is consistent with state measures in order to avoid such unintended consequences.

Comment 14: BLM must recognize and align with state plans and defer management to state plans such as the states of Wyoming and Utah. The State of Wyoming has the largest population of GrSG and has

been managing GrSG according to a series of executive orders creating the GrSG Core Area Protection Plan. This approach has stabilized GrSG populations, and recent surveys from the Wyoming Game and Fish Department (WGFD) indicate that the lek count is growing, with a 6 percent increase from 2021 to 2022 and a 15 percent increase from 2022 to 2023.[12]

With this demonstrated effectiveness of Wyoming's plan, as well as the ongoing stakeholder involvement through the state's Sage-grouse Implementation Team (SGIT), it makes no sense for BLM to implement conflicting management measures. BLM's management prescriptions for the Wyoming plans should reflect that state's core and non-core designations, and any compensatory mitigation requirement should be consistent with the state's mitigation requirements. Finally, any lek buffers and density and disturbance caps should reflect the state's requirements to provide consistency and allow operators to site their projects based on actual habitat avoidance instead of restriction avoidance.

Similarly, in Utah, the state established its own Conservation Plan for GrSG in 2013. It updated the plan in 2017 and continues to provide benefits to GrSG and its habitat across the Utah range. GrSG numbers continue to rise in Utah, and GrSG and habitat benefit from the state's concerted effort to improve habitat through restoration projects across the state.

Any changes to BLM management in Utah should be consistent with the State's Conservation Plan. Likewise, Nevada, Idaho, and the remaining states all have conservation and management plans that BLM must ensure it is incorporating and utilizing where appropriate to allow for consistency across the planning areas.

Requested Action 7: BLM needs to provide a set of state-specific plans for this planning process that clearly identifies the proposed management actions on federal lands and how those actions are similar to, or different from, state conservation measures.

Requested Action 8: BLM must work with the states in this planning process to create management plans that are consistent with the ongoing state efforts. While BLM's plans have faced a series of lawsuits and negative court orders since implementing the 2015 plan, the state plans have remained uncontested. Indeed, the states have been able to continue managing their plans with moderate refinements for the benefit of the GrSG instead of sweeping changes based on new administrations. BLM should follow the states to create durable plans for the benefit of the GrSG and its habitat.

[12] Mike Koshmrl, "After slump, strutting Wyoming sage grouse start to rebound," WyoFile, Sept. 11, 2013, https://wyofile.com/after-slump-strutting-wyoming-sage-grouse-start-to-rebound/.

BLM Must Issue Individual Records of Decision for Each State

Comment 15: Given the significant differences between the 10 affected states regarding management prescriptions and concepts, BLM should not aggregate 77 resource management plan amendments under a single Record of Decision (ROD). Instead, BLM should issue a separate ROD for each of the states. In addition to promoting more efficient land use plans and management, this approach would also minimize forum shopping by potential plaintiff organizations seeking to file a legal challenge against all of the RMPA(s) in a single federal court with a track record for overturning BLM decisions under FLPMA and other statutes.

Requested Action 9: BLM needs to draft and issue individual and separate RODs for each of the 10 states. These state level RODs should be executed and issued by each respective BLM State Office.

The Cumulative Impacts of the GrSG DRMPA/EIS's Management Decisions Will Impermissibly Restrict a Leaseholder's Ability to Meet its Lease Obligations

Comment 16: Cumulatively, the numerous additional measures in the GrSG DRMPA/EIS would go above and beyond the 2015 plans' management prescriptions and continue to create regulatory hurdles that would frustrate leaseholders' ability to develop their federal leases. The Alliance supports managing GrSG and its habitat for the benefit of the species and to avoid renewed consideration by the FWS for listing. However, the Alliance cannot support imposition of unduly and unnecessarily restrictive measures that are not supported by science are arbitrary and capricious, and violate valid existing lease rights. The GrSG DRMPA/EIS must be consistent in its approach to protecting the GrSG and its habitat.

BLM cannot revise or restrict a leaseholder's valid existing lease rights through imposition of conditions of approval (COAs) for drilling permits that were not contemplated at the time the leases were issued. *Colorado Environmental Coalition*, 165 IBLA at 228. Further, FLPMA's land use plan provisions require BLM to analyze economic impacts when developing or updating land use plans. 43 USC § 1712 (requiring BLM to integrate "physical, biological, economic, and other sciences" in developing land-use plans); 43 C.F.R. § 1610.4-6 (BLM land use planning regulation requiring that resource management plans "estimate and display the physical, biological, economic, and social effects of implementing each alternative considered in detail.").

With the GrSG DRMPA/EIS, however, BLM is disregarding economic impacts and instead planning to revise and restrict leaseholders' valid existing lease rights through the imposition of a no-net-loss standard, development and disturbance caps, and additional restrictive measures above and beyond the 2015 plans.

Requested Action 10: The GrSG DRMPA/EIS must allow for continued access to and development of valid existing rights. There are several examples where existing conditions will make continued access and development very difficult based upon the proposed prescriptive measures found across each of the proposed alternatives. In addition, some proposed restrictions are not feasible, realistic, or legally viable. The Alliance is concerned that cumulatively, the GrSG DRMPA/EIS's measures will serve to preclude a leaseholder's ability to efficiently develop its leases GrSG habitat.

Requested Action 11: BLM should remove or modify onerous and unreasonable or impractical stipulations or conditions of approval to create a land use plan that protects GrSG and its habitat while allowing development pursuant to valid existing rights.

The GrSG DRMPA/EIS's "Net Conservation Gain"/"No Net Habitat Loss" Standard Violates FLPMA and Exceeds BLM's Authority

Under FLPMA, BLM is required to manage public lands under the principles of multiple use and sustained yield, and in accordance with applicable land use plans, to meet the needs of present and future generations. 43 U.S.C. § 1701(a)(7), (8) & (12); 43 U.S.C. § 1732(a) & (b); 43 C.F.R. § 1610.5-3. FLPMA's definitions of multiple use and the major uses of public lands highlight the on-going utilization of natural resources on public lands for the benefit of the American people. 43 U.S.C. § 1702(c).

Consistent with its multiple-use statutory mandate, BLM is directed to prevent "unnecessary or undue degradation of the public lands . . . ." *Colorado Envtl. Coalition*, 165 IBLA 221, 229 (2005) (explaining that "[a]s to FLPMA's prohibition against undue or unnecessary degradation of the public lands, to the extent appellants mean to suggest that surface occupancy and drilling per se constitute undue or unnecessary degradation, we do not agree. Neither FLPMA nor implementing regulations defines the term "undue or unnecessary degradation."). As recognized by established IBLA precedent, however, FLPMA's non-impairment standard "cannot be used to defeat a lessee's valid existing right to develop a lease." *Colorado Open Space Council*, 109 IBLA 274, 281 n.7 (1989).

Comment 17: While BLM has changed its nomenclature in the 2015 and 2019 plans from "net conservation gain" standard to a "no net habitat loss" standard, the result remains that BLM is attempting to impose a conservation standard that contradicts BLM's enabling act and land use mandate. BLM's requirement for compensatory mitigation for any disturbance within GrSG habitat in order to provide a net conservation gain or no net loss is unduly burdensome, constrains a lessee's ability to develop its federal oil and natural gas leases, is contrary to valid existing rights and exceeds BLM's authority under FLPMA's non-impairment standard.

Comment 18: The explanation of required mitigation for Alternatives 3, 4, 5 and 6 states that "[c]ompensatory mitigation should be completed prior to initiating the activity causing the need for compensation," creating a situation wherein a project proponent will have to mitigate for impacts before any impacts actually take place. GrSG DRMPA/EIS Table 2.5. "Comparison of Alternatives, Mitigation" at 2-23. Adding to the complexity of mitigating before impact is the requirement that compensation be "at a level and in a manner to fully offset both direct and indirect impacts to habitat function," *id.*, meaning mitigation at a greater than 1:1 ratio.

This no-net-loss standard provides no clear direction as to what measures will meet the mitigation requirement, nor when the requirement must be met. Without defined parameters, this no-net-loss standard will frustrate lessee's abilities to receive approval on near-term drilling and right-of-way (ROW) approvals. Without definition and clarification, BLM will in effect render a de facto moratorium on permitting and development until the standards and specific guidelines are issued. Without clarification and certainty, this standard will frustrate an operator's ability to meet federal lease and unit requirements because of the potential that offset mitigation measures may not be available on the timelines needed to allow for scheduled development.

Comment 19: The GrSG DRMPA/EIS further suggests that BLM will require compensatory mitigation take place in the same area as the proposed impact, or within the same "neighborhood cluster" if not in the same area. GrSG DRMPA/EIS Table 2.5. "Comparison of Alternatives, Mitigation" at 2-23. While that may be appropriate in certain circumstances, the Alliance believes that the GrSG DRMPA/EIS must include more flexibility, especially for instances such as the Wyoming Core Area Plan that allows for compensatory mitigation through the purchase of habitat credits from an approved conservation bank that is not always in the same "area" or even the same "neighborhood" as proposed impacts.

Comment 20: The GrSG DRMPA/EIS ignores the fact that through bonding requirements for leases and additionally for ROWs, as well as through the added imposition of COAs requiring reclamation, BLM is assured that operators will complete reclamation on any disturbance from project development.

Requested Action 12: The requirement for compensatory mitigation must be removed from the GrSG DRMPA/EIS. At a minimum, the Alliance requests BLM carefully consider its ability to enforce a no-net-loss standard that conflicts with FLPMA's no unnecessary or undue degradation standard.

Requested Action 13: BLM must clearly define what is required to meet the no-net-loss standard, and identify mitigation options realistically available to meet this requirement. Further, BLM cannot make approval of a new project contingent on first implementing and achieving durable compensatory

mitigation before the impact occurs. There must be a balance to allow lessees to utilize their valid existing rights to development.

Requested Action 14: BLM must explain what the baseline reclamation standard is, who makes the determination of whether baseline reclamation is achieved, and whether compensatory mitigation measures can be in kind in the form of going above and beyond that baseline level, performing additional studies or surveys, or some additional measure not yet developed.

Requested Action 15: BLM must defer to state plans for compensatory mitigation programs. In Wyoming, for example, the standard for compensatory mitigation is to purchase credits from a conservation bank. BLM should respect that approach in Wyoming and not require an operator provide compensatory mitigation based on a state requirement and an additional BLM requirement when just the state's program is sufficient for the benefit of the GrSG.

Requested Action 16: BLM must clarify whether reclamation efforts, once established, such as a well pad reclamation or ROW reclamation, then become de facto critical habitat that cannot subsequently be disturbed, or whether reclaimed land can be re-impacted should an operator propose a pad expansion or need to perform an operation that would require such disturbance of reclaimed lands.

Requested Action 17: The GrSG DRMPA/EIS should include an express provision to allow for site-specific ground-truthing of habitat areas on a project-specific basis in order to allow for customized and adaptable mitigation measures at the project level to address local needs and specific conditions. These flexible management prescriptions would allow for adjustment of stipulations, conditions of approval, mitigation measures, or other limitations or restrictions based upon site-specific conditions.

The GrSG DRMPA/EIS Unlawfully Imposes a No-Net-Loss Standard and Species Recovery Requirement for Non-Listed Species in Violation of the Endangered Species Act and FLPMA

The BLM Special Status Species Management Manual, Manual-6840, provides that BLM's objectives for special status species include "[t]o initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the [Endangered Species Act (ESA)]." Manual-6840, .02 "Objectives". The Manual notes that by preventing listing, "BLM will have greater flexibility in managing the public lands to accomplish native species conservation objectives and other legal mandates." *Id.* at .2. Importantly, BLM's management should provide flexibility, and be less burdensome than an ESA listing would be.

Comment 21: The Alliance is concerned that the prescriptive measures and restrictions in the GrSG DRMPA/EIS impose management restrictions that exceed the statutory authority of the BLM under FLPMA, particularly for a species not listed as threatened or endangered under the ESA.

At the project level, oil and natural gas operators on federal lands are responsible for mitigating impacts that would otherwise adversely affect or jeopardize a listed species. It is not appropriate for industry to be required to recover a listed species, let alone a species that is not listed but instead subject to the primary jurisdiction of the appropriate state game and fish agency.

In an ESA context, under Section 7 consultation, while a jeopardy analysis looks to whether affects may jeopardize the existence of an entire species, or appreciably affect the recovery of a species, there are significant legal limitations of such an analytic framework. While operators must mitigate impacts on listed species and can commit to conservation measures that would result in a benefit to the species, under the ESA, FWS and BLM cannot impose requirements that require species recovery. Yet through the multiple measures proposed across the range of alternatives in the GrSG DRMPA/EIS, it appears that BLM is imposing a recovery standard for a non-listed species.

Requested Action 18: BLM must modify the management prescriptions in the GrSG DRMPA/EIS to provide reasonable management for the GrSG, not management designed to achieve recovery of a not-listed species.

The GrSG DRMPA/EIS Unduly Limits Operational Flexibility Through Restrictions on Waiver, Exception and Modification Criteria

As a general matter, waivers, exceptions and modifications (WEM) provide necessary regulatory flexibility needed by both BLM and operators to develop oil and natural gas leases on public lands. Historically, WEMs are only applied for and approved by BLM if potential adverse effects are eliminated or significantly mitigated, or if local conditions at the time render the original lease stipulations or COAs unnecessary. Approval of WEMs afford additional flexibility at the field or landscape level, and can often result in less disturbance across the landscape (*e.g*. granting an exception for a fraction of an acre on a NSO lease for a pipeline ROW may reduce overall impacts to much larger acreages if the NSO cannot be traversed).

BLM regulation specifically directs that lease stipulations “shall be subject to modification or waiver” in certain circumstances. 43 C.F.R. § 3101.1-4. The Alliance is unclear how BLM can modify its existing regulations through a plan amendment in order to entirely eliminate a leaseholder’s ability to obtain WEMs where they would otherwise be available.

Comment 22: The GrSG DRMPA/EIS proposes 52-pages of limited waivers, exceptions, and modifications to no surface occupancy (NSO) stipulations, disturbance caps, and seasonal timing limitations only. GrSG DRMPA/EIS at Section 2.5.7 "Fluid Mineral Lease Stipulation Waivers, Exceptions, and Modifications" at 2-47. The Alliance is concerned with BLM's continued decision to limit its and lessees' operational flexibility by only allowing limited WEMs to certain restrictions within the GrSG DRMPA/EIS.

Comment 23: As proposed, the process for evaluation of WEM requests embeds compliance with the HAF process, including compliance with all indicators and achievement of all defined benchmarks. This overly complex process ensures that BLM will not be able to process and approve WEMs.

Comment 24: The GrSG DRMPA/EIS fails to provide an efficient and timely process for processing exceptions to seasonal stipulations, and have a documented track record of success in allowing exceptions in a manner that does not result in any significant or adverse impact to the wildlife resources of the subject stipulation.

Comment 25: The WEM criteria are too stringent, afford no flexibility, and are based upon a series of unrelated criteria (e.g. non-habitat criteria, adaptive management thresholds, suitable habitat). The criteria ensure that BLM can never provide an exception.

Requested Action 19: BLM should revert to its existing policy on WEM to allow for flexibility and local discretion based on site-specific circumstances. GrSG management should not require a more stringent standard that is already required of WEM requests.

The GrSG DRMPA/EIS Revises Valid Existing Lease Terms in Violation of Pre-FLPMA Lease Rights

Importantly, pre-FLPMA leases, issued before October 21, 1976, are not subject to BLM's regulations created to implement FLPMA (*e.g.,* land use planning regulations for the promulgation of RMPs). FLPMA expressly recognizes and protects these pre-existing lease rights. The statute states that nothing "in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act [October 21, 1976]." 43 U.S.C. § 1701 note (a). Moreover, FLPMA provides that all "actions by the Secretary concerned under this Act shall be subject to valid existing rights." *Id.* § 1701 note (h).

Under the plain language of the statute and well-established legal precedent, operators are allowed to develop their pre-FLPMA leases even if development impairs sensitive resources. *Colorado Envtl. Coalition v. Bureau of Land Mgmt.*, 932 F. Supp. 1247, 1251 (D. Colo. 1996) (explaining that "those who held existing mineral leases when FLPMA was enacted are exempt from the standard in § 603(c) that

requires management of such leases in such a way as not to impair suitability for preservation of wilderness."); *see also Virgil Schuette,* 131 IBLA 332, 336 (1994); *Colorado Open Space Council*, 109 IBLA 274, 281 n.7 (1989); "The Bureau of Land Management Wilderness Review and Valid Existing Rights," 88 I.D. 909, 912–13 (1981) (Solicitor's Op. M-36910 (Supp.)) (Solicitor's Opinion explaining that "the holder of an oil and gas lease or a right-of-way authorization issued prior to the enactment of FLPMA may develop the leasehold or right-of-way to the extent authorized by the issuance or approval document.").

Courts have long upheld pre-FLPMA lease rights, recognizing the express and unequivocal Congressional intent to protect and preserve those rights when it enacted FLPMA. *See e.g., The Wilderness Soc'y v. Kane County, Utah*, 632 F.3d 1162, 1166 (10th Cir. 2011) (citing § 1701 notes (a) and (h) to state that FLPMA expressly preserved rights existing prior to the enactment of FLPMA, including rights-of-way); *W. Watersheds Project v. Matejko*, 468 F.3d 1099, 1104 (9th Cir. 2006) (citing § 1701 notes (a) and (h) to show Congress chose to preserve and protect rights vested prior to the enactment of FLPMA); *County of Okanogan v. Nat'l Marine Fisheries Serv.,* 347 F.3d 1081, 1085 (9th Cir. 2003) (citing § 1701 notes (a) and (h) to show that the government could not divest a private party of an existing land use right or other valid existing right).

Comment 26: The GrSG DRMPA/EIS proposes lease stipulations through permit COAs on valid existing leases, an action that vastly exceeds pre-FLPMA lease contract terms. For example, NSO requirements during lekking, nesting, and early brood rearing; requiring compensatory mitigation to a no-net-loss standard; and imposing disturbance and density caps on development. These management prescriptions would unduly and unreasonably restrict the rights of pre-FLPMA leaseholders and their ability to develop their leases.

Requested Action 20: Before the GrSG DRMPA/EIS is finalized through the issuance of a ROD, BLM must clearly articulate and document that valid existing lease rights will not be subject to the RMPA's management restrictions via imposition of new COAs on existing leases or otherwise.

The GrSG DRMPA/EIS Fails to Adequately Substantiate Proposed Lease Restrictions and COAs, and Utilize Least Restrictive Measures

BLM is required by statute to utilize the least-restrictive management practices with respect to oil and natural gas development. Pursuant to Section 363 of the Energy Policy Act of 2005, lease restrictions are "only as restrictive as necessary to protect the resource for which the stipulations are provided." 42 USC § 15922(b)(3)(C). With respect to oil and natural gas resources, BLM's Manual 1601 on Land Use Planning, and Manual 1624 on Planning for Fluid Minerals, specifically direct BLM not only to identify which areas would be subject to different categories of restrictions as included in the GrSG DRMPA/EIS,

but also to show that "the least restrictive constraint to meet the resource protection objection [is] used." See BLM Handbook H-1601-1, App. C.II.H. at 24.

Comment 27: BLM has failed to meet its statutory obligation under Section 363 of the Energy Policy Act of 2005 to utilize least restrictive measures to protect GrSG and its habitat in the GrSG DRMPA/EIS. BLM has failed to analyze whether it is utilizing the least restrictive measures that will achieve the same overall goal of conservation of GrSG and its habitat

Comment 28: The GrSG DRMPA/EIS fails to recognize scientific studies providing a basis for rational and supportable GrSG management measures that are less restrictive and as effective from a biological basis; unjustifiably limits surface disturbance without a legal basis or other justification; and seeks to impose compensatory mitigation on lessees' valid existing lease rights. The management prescriptions contained in the GrSG DRMPA/EIS far exceed what is required under FLPMA, NEPA, and even the ESA if the species were listed.

It is well established that at the project level, upon a specific proposed action and analyses under an EIS, it is permissible for a lessee's operations to have significant impacts on the environment. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989). The Supreme Court has plainly stated that so long as BLM identifies and evaluates the potential adverse environmental impacts, BLM is under no obligation to avoid impacts to environmental resources. *Id.*

In contrast, here, the GrSG DRMPA/EIS could be interpreted as imposing a "no significant impact" standard for oil and natural gas operations. This de facto insignificance standard violates BLM's statutory mandate under FLPMA to manage public lands for multiple use, and its recognition of oil and natural gas resources as a "major use" of public lands. It also is contrary to the basic tenets of NEPA and long established legal precedent.

Requested Action 21: The GrSG DRMPA/EIS must be revised to include least restrictive protective measures for the GrSG pursuant to BLM's Land Use Planning Handbook and the statutory requirement of Section 363 of the Energy Policy Act of 2005. In the alternative, the Alliance requests that the ROD reject unduly restrictive and unsupportable measures in the GrSG DRMPA/EIS and adopt more measured and consistent GrSG lease stipulations, COAs, and management prescriptions similar to those adopted in the 2019 plans.

Comment 29: The Alliance is concerned that BLM failed to recognize existing science, data, and design management prescriptions based on sound, supportable, viable and effective strategies for the benefit of the GrSG and its habitat.

Requested Action 22: BLM must revise the GrSG DRMPA/EIS to provide reasonable, science-based and record-supported protective measures for the GrSG. In the alternative, the Alliance requests that BLM expressly reject these measures in the ROD and rely upon rational, supportable, and viable GrSG management prescriptions.

BLM Must Frame Prioritization Within FLPMA and BLM's Multiple-Use Mandate

BLM's use of "prioritization" stems from the language of one of the objectives in the 2015 plans. As background, the 2015 GrSG RMPAs provided a series of Goals, Objectives, and Management Decisions. *See e.g.* Wyoming RMPA at 22. The goals and objectives (desired outcomes), including the prioritization objective were considered "in the development of the management actions." *Id.* Thus, the specific management decisions were the action items that BLM imposed to meet the desired outcomes in the goals and objectives. The goals and objectives were not, therefore, binding actions in themselves. *Id.*

The objective related to prioritization states that, through the implementation of the specific management decisions,

> [p]riority will be given to leasing and development of fluid mineral resources, including geothermal, outside of PHMAs and GHMAs. When analyzing leasing and authorizing development of fluid mineral resources, including geothermal, in PHMAs and GHMAs, and subject to applicable stipulations for the conservation of GRSG, priority will be given to development in non-habitat areas first and then in the least suitable habitat for GRSG. The implementation of these priorities will be subject to valid existing rights and any applicable law or regulation, including, but not limited to, 30 U.S.C. 226(p) and 43 C.F.R. 3162.3-1(h). Where a proposed fluid mineral development project on an existing lease could adversely affect GRSG populations or habitat, the BLM will work with the lessees, operators, or other project proponents to avoid, reduce and mitigate adverse impacts to the extent compatible with lessees' rights to drill and produce fluid mineral resources. The BLM will work with the lessee, operator, or project proponent in developing an application for permit to drill (APD) for the lease to avoid and minimize impacts to sage-grouse or its habitat and will ensure that the best information about the GRSG and its habitat informs and helps to guide development of such federal leases.

After finalizing the RMPAs, BLM developed a series of guidance documents to assist BLM staff in implementing the RMPAs. The first related to prioritization was Instruction Memorandum 2016-143 (IM 2016-143) "Implementation of Greater Sage-grouse Resource Management Plan Revisions or

Amendments: Oil & Gas Leasing and Development Sequential Prioritization") which BLM issued on September 1, 2016.

IM 2016-143 provided for a three-tiered prioritization sequence for considering leasing in or near GrSG habitats, and seven factors to consider while evaluating expressions of interest (EOIs) in each tier.

On December 27, 2017, BLM rescinded IM 2016-143 and replaced it with IM 2018-026 ("Implementation of Greater Sage-grouse Resource Management Plan Revisions or Amendments - Oil & Gas Leasing and Development Prioritization Objective"). IM 2018-026 also provided for a prioritization framework for working through EOIs starting with those parcels outside of habitat first, then parcels in GHMA, and then PHMA parcels.

On May 22, 2020, a court in the District of Montana (Montana Wildlife Federation v. Bernhardt, 4:18-cv-00069-BMM) vacated IM 2018-026, finding that the IM and leasing decisions that took place in the vicinity of its enactment violated FLPMA in that they were inconsistent with the governing land use plans in two distinct ways. First, the Court found the IM improperly limited prioritization obligations only to situations when BLM faces a backlog of EOIs. Second, the Court found that the 2018 IM "renders the prioritization requirement a mere procedural requirement, even though the 2015 plans require the prioritization requirement also to have some sort of substantive thrust." *Mont. Wildlife Fed'n v. Bernhardt*, No. CV-18-69-GF-BMM, 2020 U.S. Dist. LEXIS 90571, at *23 (D. Mont. May 22, 2020).

As a result of this Montana decision, BLM's Wyoming State Office deferred the planned June 2020 BLM Wyoming Oil and Gas Lease Sale. It also deferred 157 of the 165 nominated parcels to be offered at the September 2020 BLM Wyoming lease sale, pending BLM's development of an approach to prioritization that is in line with the Montana Court's decision. *See* Decision Record, Third Quarter 2020 Competitive Oil and Gas Lease Sale EA, DOI-BLM-WY-0000-2020-0009-EA.

In December of 2020, BLM Wyoming developed a prioritization scheme to comply with the Montana Court's Opinion, and incorporated that approach to its decision to offer parcels for sale in the Fourth Quarter Wyoming lease sale. In so doing, it deferred all nominated parcels within PHMAs. On January 19, 2021, plaintiffs in the Montana federal district court action amended their complaint to challenge the Wyoming BLM December 2020 lease sale on the same grounds that they challenged the previous actions, alleging that even the new prioritization method applied by Wyoming BLM did not comport with the 2015 GrSG RMPAs.

Comment 30: The Alliance recognizes that Alternatives 5 and 6 do not purport to include "prioritization" when it comes to oil and natural gas leasing. However, Alternatives 5 and 6 share a similar objective with Alternative 4 which does include prioritization, incorporated with a HAF analysis at the fine, mid,

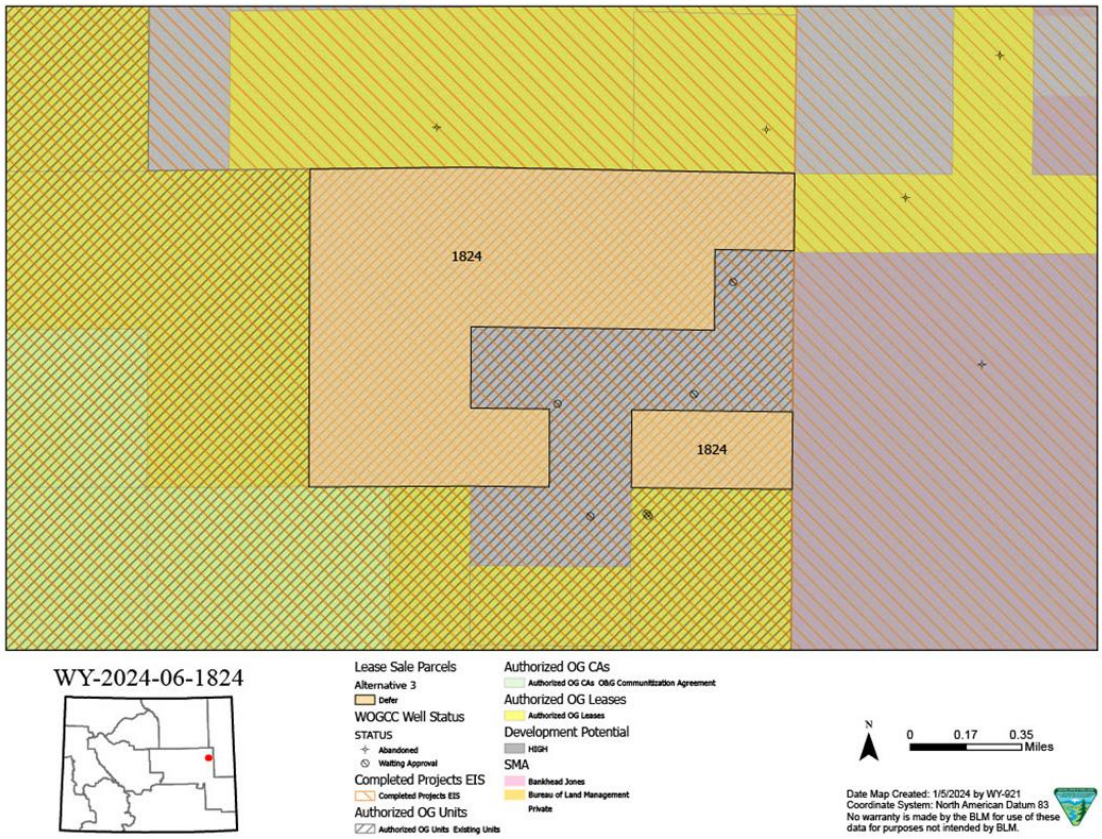
and site-scales and an analysis of whether the lands are "low preference" value for impacts to GrSG habitats (leasing allowed) or "high preference" value for impacts to GrSG habitats (leasing not allowed).

Additionally, the Alliance is fully aware that BLM's recent final rule titled "Fluid Mineral Leases and Leasing Process," 89 Fed. Reg. 30916 (April 23, 2014) (effective June 22, 2024), includes a new regulation at 43 C.F.R. § 3120.32 titled "Expression of interest leasing preference", which allows BLM to determine not to offer lands with "important fish and wildlife habitats or connectivity areas" when considering EOIs. *See* 89 Fed. Reg. 30986, § 3120.32(b). Based on this mechanism in the new BLM regulations, the Alliance is concerned that with or without BLM's selection of proposed Alternative 3, there will be no new leasing in GrSG habitat.

Comment 31: The Alliance opposes the criteria for leasing detailed in Alternative 4. These criteria prohibit multiple use of public lands in violation of FLPMA. Indeed, FLPMA does not allow for a single use, including managing for GrSG habitat, to be mutually exclusive to all other uses over a broad geographic range that is the 121 million acres of public lands analyzed in the GrSG DRMPA/EIS.

Requested Action 23: BLM must make clear that any use of prioritization—either from the new leasing regulation perspective or the GrSG DRMPA/EIS perspective—will not entirely preclude future leasing of parcels in GrSG habitat.

Requested Action 24: BLM must ensure that its decisions on whether to offer a parcel for lease take into account the surrounding area such that a parcel is not offered because it is in GrSG habitat yet surrounding acreage is all leased, creating the potential for double surface disturbance as developers must stop wells short on either side of the unleased parcel instead of allowing a developer the opportunity to drill through a section to fully produce the minerals. An example of this situation is BLM Wyoming's determination to not lease parcel 1824 in the second quarter 2024 lease sale because it is in GrSG habitat. Yet as is evident in the below diagram, the surrounding lands are fully leased for oil and natural gas development.



The Habitat Assessment Framework Is an Unlawful, De Facto Regulation that Imposes Draconian Mandatory Requirements and Impermissibly Removes Flexibility from the Land Use Management Process

The GrSG DRMPA/EIS incorporates and utilizes a new concept, the HAF, with multiple scales that then focus on management objectives, triggers, and prescriptions. The three scales are: (1) First Order, broad scale, physical or geographical range of a species; (2) Second order, mid-scale, population areas and dispersal between subpopulations; and (3) Third order, fine-scale, home range of isolated populations, subpopulations, or an individual, and may include seasonal habitats within a home range. GrSG DRMPA/EIS Section 3.2.2 at 3-7.

Comment 32: As utilized throughout the range of alternatives and within PHMA and GHMA designations, the HAF scales are much smaller and more focused, creating a narrower look at GrSG habitat when operators are faced with disturbance caps or mitigation requirements. Throughout the GrSG DRMPA/EIS, BLM uses the HAF fine-scale as a metric or trigger for mitigation, restrictions, and

other management prescriptions. Very few if any exceptions or flexibility are provided at the HAF fine scale because it is so very narrow in its scope. This narrow focus threatens to hinder valid existing rights even when stating that the GrSG DRMPA/EIS will recognize such rights.

Comment 33: The Alliance is concerned that the HAF will unduly restrict BLM's flexibility or ability to grant WEMs. For example, looking at disturbance caps with the HAF fine-scale applied, Alternative 3 provides that "If disturbance from existing infrastructure developments exceeds 3% of habitat at the project scale or HAF fine scale area, new infrastructure associated with pre-existing authorizations would be deferred. The smaller size of most HAF fine-scale areas compared to BSU-scales might result in the cap being reached more quickly. This may prevent some development and associated impacts to GRSG." GrSG DRMPA/EIS Section 4.2.4 at 4-22 (emphasis added).

Alternative 4 explains that "[i]mpacts from applying a 3% disturbance cap at the project scale and within HAF fine scale habitat selection area would be similar as to those described for Alternative 3, however, the cap would apply to both existing and proposed infrastructure authorizations (subject to valid existing rights)." GrSG DRMPA/EIS Section 4.2.5 at 4-25. However, the section goes on to explain that "[t]here would be no exceptions to the 3% PHMA (and IHMA) disturbance cap at the HAF fine scale habitat selection area, which would limit the overall level of disturbance at this scale." *Id.* (emphasis added). Tied to the proposed adaptive management, where more than 3% of habitat within a HAF fine-scale area is damaged from fire or other non-development disturbance, no new projects would be approved until the habitat is restored. *Id.*

Alternatives 5 and 6 would apply the 3% disturbance cap at the HAF fine scale across the planning area, despite the fact that in Wyoming and Montana, for example, the proposed disturbance cap is proposed at 5%. GrSG DRMPA/EIS Section 4.2.6 at 4-30.

Requested Action 25: The HAF fine scale provides the most restrictions and the least amount of flexibility when applied to management objectives, triggers, and prescriptions, and will require BLM to deny many proposed projects based on the HAF without allowing any further explanation or justification in violation of valid existing rights and contrary to FLPMA's multiple use mandate. BLM must remove the HAF fine scale or significantly revise it in order to allow local flexibility and consistency with state plans for GrSG management.

Revised Adaptive Management Standards are Confusing and Rely on Data that BLM Does Not Collect nor Manage

The adaptive management program as provided in Alternatives 3, 4, 5 and 6 incorporates thresholds to indicate to BLM a potential need for further conservation measures for the protection of GrSG and its habitat. The proposed program relies on state data, and implementing the Targeted Annual Warning System (TAWS) to notify when such thresholds have been met.

Comment 34: The Alliance is concerned that adaptive management as proposed in Alternatives 3, 4, 5 and 6 relies on state population data, collected and maintained by states. This is somewhat ironic in that BLM is relying on the states to provide population data in order to make each and every project approval decision within GrSG habitat, yet throughout the GrSG DRMPA/EIS, BLM refuses to adapt its proposed management plans to be consistent with state-led GrSG management plans.

Further, while BLM may want population data, there is no guarantee that the states are required to give BLM such data. Lower population could mean greater restrictions on development projects, which could in turn lead to less revenue from oil and natural gas development in the state from taxes, royalties, and employment, which in turn could lead to less funding for GrSG conservation efforts. It may not always be in the best interests of the respective states to provide such population numbers to BLM.

Comment 35: Adaptive management in the 2015 and 2019 plans incorporated a component of cooperation with state wildlife agencies that also allowed for adaptive management across a habitat area instead of one set of requirements on federal lands and a different set of requirements when population or habitat triggers are met. This allowed for consistency and understanding of expectations.

Comment 36: The Alliance is concerned that the adaptive management proposal is confusing and will be near-impossible to implement, with hard and soft triggers, analysis deadlines, and possibilities where BLM may still approve projects during and after a causal factor analysis (CFA) in some instances but not in other instances, and a clear statement that triggers only apply in PHMA except when they do not. The adaptive management proposal is contradictory and lacks controls to ensure that BLM will meet any set CFA deadlines in order to provide certainty to operators proposing projects in areas that have hit a trigger. BLM already struggles to meet its permitting and leasing obligations. It would be hamstrung wading through all the permutations, conditions, and exceptions contemplated. As explained, "adaptive management responses are directed to addressing habitat concerns on BLM lands and are limited to PHMA . . . [though] [l]ocal responses to thresholds reached in GHMA can be considered if deemed necessary . . . ." GrSG DRMPA/EIS Section 2.5.13, at 2-120.

Comment 37: BLM cites "habitat fragmentation, loss and disturbance" as the primary "influences" on GrSG population trends. This statement ignores annual precipitation, which studies show is a major contributing factor to GrSG habitat and species population.

Requested Action 26: BLM should revise its adaptive management program to rely on a habitat scale which BLM itself can collect data to support, instead of relying on population data that BLM has no control over.

Requested Action 27: BLM must clarify whether the adaptive management program is looking range-wide or at a narrow, HAF fine-scale. The explanation is unclear and could have different results depending on the scale utilized.

Requested Action 28: BLM must explain the science supporting modification of the adaptive management system from the 2015 and 2019 plans to the currently proposed system. Alternative management in previous versions did not include the obstructive triggers that stop development while ongoing studies and analysis are performed.

Requested Action 29: BLM must clarify how the adaptive management and CFA components work, and whether and how existing permitted projects determine whether they can continue during the CFA process. A broad statement that "permitted activities can continue unless those activities are causing mortality to GRSG or direct loss or degradation of occupied GRSG habitat" does not give anyone any assurances as to what will or will not be allowed activities during the CFA process. GrSG DRMPA/EIS Table 2-15 at 2-125.

Requested Action 30: BLM should remove the concept of hard and soft triggers in order to allow BLM to appropriately analyze, along with state game and fish agencies, anomalies in habitat and population numbers as appropriate. This would ensure the most current and accurate data are used, and contain the analysis to site-specific concerns instead of an unnecessarily broad range-wide review.

Requested Action 31: Any final management decisions related to adaptive management analysis should include input from affected stakeholders and allow such stakeholders to provide voluntary or compensatory mitigation efforts for the benefit of the GrSG, in order to improve habitat and reverse any negative trends.

Requested Action 32: In areas of habitat loss due to fire, BLM again reiterates that project approvals may be deferred until habitat is restored. Such deferral is in violation of valid existing rights and BLM must ensure that it is respecting leaseholders' rights to develop pursuant to FLPMA's multiple use mandate. Further, requiring delay of projects in areas no longer suitable as GrSG habitat is inappropriate

as the lands are, at that point, no longer suitable habitat and may need years of rehabilitation in order to once again become viable habitat. BLM should not defer new projects in such areas, but should also consider that operators could help provide restoration while developing their lease rights.

The GrSG Draft RMPA/EIS Ignores the Inflation Reduction Act's Directive to Lease

The Inflation Reduction Act (IRA) includes a provision that ties the amount of oil and natural gas onshore lease acreage BLM offers for sale on an annual basis as a prerequisite for issuance of a right-of-way for wind or solar energy projects. The IRA states "the Secretary may not issue a right-of-way for wind or solar energy development on Federal land unless (A) an onshore lease sale has been held during the 120-day period ending on the date of the issuance of the right-of-way for wind or solar energy development; and the sum total of acres offered for lease in onshore lease sales during the 1-year period ending on the date of the issuance of the right-of-way for wind or solar energy development is not less than the lesser of (i) 2,000,000 acres; and (ii) 50 percent of the acreage for which expressions of interest have been submitted for lese sales during that period . . . ." Section 50265, Pub. L. No. 117-169, 136 Stat. 1818 (2022).

Comment 38: To be incompliance with Sec. 50265 of the IRA, BLM must offer either a sum total of 2,000,000 acres or 50% of the acreage nominated through expressions of interest (whichever is lesser) must be offered for sale through the competitive lease sale process.

Comment 39: BLM's GrSG DRMPA/EIS fails to analyze or even address whether the significant restrictions on oil and natural gas leasing proposed under each alternative will adversely impact BLM's ability to meet its statutory requirements under the IRA regarding oil and natural gas leasing.

Requested Action 33: Given the wide-ranging scope of the GrSG DRMPA/EIS, and the significant restrictions on oil and natural gas leasing, even under the least restrictive alternative, this analysis is important for purposes of compliance with the IRA. Moreover, BLM needs to detail in the GrSG DRMPA/EIS a process for BLM to conduct a similar analysis at the lease sale stage to inform whether BLM is going to meet its IRA requirements, and to what extent the proposed acreage being offered for sale goes towards BLM meeting its mandatory statutory requirements.

BLM Fails to Provide Useable Maps to Provide Meaningful Information to the Public

Comment 40: The GIS mapping layers for all alternatives appear to be based on additional resources beyond GrSG leks and habitat. It is hard for the public to determine if these areas were truly intended to be part of the management described within the alternatives as GrSG habitat or if there is some error.

When comparing GIS layers for GrSG leks and habitat from the GrSG DRMPA/EIS to GrSG habitat identified by the WGFD, for example, there is some correlation. However, there are additional habitat designations presented in the GrSG DRMPA/EIS which do not include known GrSG habitat at all. For example, in the Wyoming maps, there are several polygon features that do not correlate with any known lek or habitat data but appear to be based on raptor nests such as golden eagles and burrowing owls. Likewise, there are line features that include major stipulations that correlate to historic trails. Both are presented as if they were GrSG habitat, which is not factually accurate and inappropriate for inclusion in the GrSG DRMPA/EIS. Further, a proposed NSO stipulation seems to have been applied randomly to the boundaries of permitted oil and natural gas EIS project areas. These boundaries do not warrant habitat being deemed GrSG in all instances and may be devoid of leks.

Requested Acton 34: BLM's maps do little to inform the public on specific habitat areas within each state, let alone within a county or locality. BLM must provide state and Field Office level maps based on actual GrSG data for each resource area.

The GrSG DRMPA/EIS's Proposed Use of ACECs is Contrary to FLPMA and Unlawful under the APA

FLPMA defines an ACEC as an area "within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a). The Secretary of the Interior has the ability to "designat[e] . . . areas of critical environmental concern" under FLPMA Section 202. *See* 43 U.S.C. § 1712(c)(3). BLM regulations implementing FLPMA instruct that areas having potential for ACEC designation "shall be considered during the development and revision of resource management plans and during amendments to resource management plans . . . ." 43 C.F.R. § 1610.7-2(b).[13]

As reflected by FLPMA, and expressly stated in FLPMA's implementing regulations and BLM policy, to qualify for consideration of the ACEC designation, identified resources and values must have substantial significance and values with "qualities of special worth, . . . national or more than local importance . . . ." 43 C.F.R. § 1610.7-2(d)(2). Further, an area must meet relevance and importance criteria, and require special management attention. 43 C.F.R. § 1610.7-2(d).

[13] As effective on June 10, 2024.

Comment 41: An ACEC must protect unique resources that are more than locally significant. In Wyoming, for example, GrSG habitat is commonplace and not even locally significant. As BLM explains in the GrSG DRMPA/EIS, this planning process touches and concerns approximately 69 million acres across 10 states. The sheer size of the sagebrush sea and the expansive coverage of the GrSG DRMPA/EIS demonstrate that GrSG habitat is not unique and does not warrant ACEC designation.

Comment 42: The lands proposed for ACEC designation do not meet BLM's relevance and importance criteria, and do not require special management attention afforded by ACEC designation. As an initial matter, the multiple proposed ACEC locations do not meet BLM's relevance criteria. While proposed to protect GrSG, the proposed lands are within PHMA areas which already receive the most restrictive management prescriptions within GrSG habitat. These lands are not unique among other PHMA lands and should not be so designated.

Comment 43: The areas proposed for ACEC designation do not meet importance criteria. While the revised regulations[14] provide a broad definition for importance criteria, BLM cannot designate *all* of GrSG habitat as an ACEC, and has not justified smaller subsets for additional designation. Further, in order to designate lands as ACECs, they must meet relevance and importance criteria *and* require special management attention.

The revised ACEC regulations explain that an area requires special management attention if ACEC protections are necessary to prevent irreparable damage such that restoration would otherwise be impossible. With this added requirement for ACEC designation, BLM should restrict such designations to lands and resources that are not already protected by a multitude of stipulations, limitations, best management practices and other efforts devised to protect the species and its habitat as is the case with GrSG.

BLM fails to analyze how the proposed ACEC designations across Alternatives 3 and 6 would provide protections different from the management prescriptions that would be imposed under each of the management alternatives. Further, BLM does not analyze the impacts of the proposed ACEC designations on other resources and other uses of public lands.

BLM has failed to prove how additional management prescriptions in the form of ACEC designation are needed, and has failed to explain how oil and natural gas development would impair GrSG conservation.

[14] As provided in BLM's Conservation and Landscape Health final rule, 89 Fed. Reg. 40308, 40338 (May 9, 2024) (effective June 10, 2024).

BLM has not shown in the GrSG DRMPA/EIS how the ACECs contemplated in Alternatives 3 and 6 meet the relevance and importance criteria necessary under FLPMA.

Requested Action 35: The Alliance reiterates its May 14, 2024 comments on BLM's proposal to include ACECs in the GrSG planning process and requests that BLM withdraw the ACEC designations in each of the management alternatives. BLM should provide an informative analysis to describe impacts of ACEC designations for Alternatives 3 and 6. BLM must analyze the incremental difference in land use management that would result from the proposed ACEC designations for each management alternative.

Conclusion

The GrSG DRMPA/EIS presents numerous fundamental legal and technical flaws that render it inoperative and incapable of being administered in a rational and consistent manner where BLM decision-making complies with the legal standards of the APA, FLPMA, and its governing resource use statutes such as the MLA. To provide regulatory certainty, and to provide effective conservation for the GrSG and its habitat, BLM must withdraw the GrSG DRMPA/EIS and significantly revise and rework it to fix the extensive flaws.

Sincerely,

Kathleen M. Sgamma
President

WMC
WOMEN'S MINING COALITION

Submitted Electronically to:
https://eplanning.blm.gov/eplanning-ui/project/2016719/595/8020241/comment

June 12, 2024

Bureau of Land Management
Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101
ATTN: HQGRSG RMPA
BLM_HQ_GRSG_Planning@blm.gov

RE: Comments on BLM's Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning, Federal Register Vol. 89, No. 52

Dear Bureau of Land Management:

I. Introduction

The Women's Mining Coalition (WMC) is providing these comments in response to the Bureau of Land Management's (BLM's) Notice of Availability published in the Federal Register on March 15, 2024 (Vol. 89, No. 52, pp. 18963 - 18967) seeking public comments on the Draft Greater Sage-Grouse (GRSG) Resource Management Plan Amendment (RMPA) and Draft Environmental Impact Statement (EIS). The Draft RMPA/EIS amends 77 BLM land use plans in ten western states.

In February 2022, WMC submitted extensive comments in response to BLM's November 22, 2021 Notice of Intent (NOI) and request for public scoping comments on the GRSG EIS and Land Use Plans to amend the 2015 GRSG Land Use Plan Amendments (LUPAs). Our comments suggested an issue of national importance that needed to be evaluated in the future GRSG EIS. As explained below, BLM either ignored or dismissed our comments because this Draft RMPA/EIS is silent on the issue of how proposed mineral withdrawals would exacerbate the Nation's reliance on foreign countries for critical minerals like lithium, cobalt, graphite, manganese, and other minerals that the U.S. Geological Survey (USGS) has included in its Critical Minerals List.[1] BLM's failure to evaluate this critically important issue threatens our national minerals security and weakens our already vulnerable domestic mineral supply chains.

[1] https://www.usgs.gov/index.php/news/national-news-release/us-geological-survey-releases-2022-list-critical-minerals

The National Environmental Policy Act (NEPA) requires the BLM to take a hard look at the direct, indirect, and cumulative impacts of withdrawing large swaths of land from mineral entry as proposed in several of the alternatives in the Draft RMPA/EIS. Because the Draft RMPA/EIS does not include this required evaluation, it is fatally flawed. BLM must prepare a Supplemental Draft RMPA/EIS to cure this defect in order to inform the public of the consequences of the proposed mineral withdrawals in Alternatives 1 and 3 and the potentially *de facto* mineral withdrawals that could result from the widespread designation of Areas of Critical Environmental Concern (ACECs) in Alternative 6.

About WMC

WMC is a grassroots organization with over 200 members nationwide. Our mission is to advocate for today's modern domestic mining industry, which is essential to our Nation. WMC members work in all sectors of the mining industry including hardrock and industrial minerals, coal, energy generation, manufacturing, transportation, and service industries. We convene annual Washington, D.C. Fly-Ins to give our members an opportunity to meet with members of Congress and their staffs, as well as with federal land management and regulatory agencies to discuss issues of importance to both the hardrock and coal mining sectors.

WMC has a long history of involvement with the GRSG issue dating back to 2012 when we submitted scoping comments on BLM's December 9, 2011 NOI requesting public scoping comments on the Draft EIS it was then preparing to evaluate GRSG habitat conservation measures. Since then, WMC has submitted detailed comments on each of the Draft and Final GRSG RMPA/LUPAs and EISs and BLM's December 2016 Sagebrush Focal Areas Withdrawal Draft EIS. We are thus exceptionally well qualified to provide comments on the 2024 Draft RMPA/EIS.

II. The Draft RMPA/EIS Should Have Evaluated a State Management Alternative

Section 4.21 of the Draft RMPA/EIS recognizes the effectiveness of regulatory measures in several state plans in reducing threats to GRSG populations:

> Specifically, the regulatory conservation actions mandated by the State plans in WY, MT, and OR, and through mitigation required by the NV plan provide the greatest degree of regulatory certainty in addressing potential threats to GRSG. Required mitigation in NV is through the Conservation Credit System (CCS) managed by the State of Nevada Sagebrush Ecosystem Program. The goal of the CCS is to generate a net benefit of greater sage-grouse habitat on public lands, but it may be adapted to support the ongoing preservation, enhancement, and restoration of NV sagebrush ecosystem. The regulatory plans may reduce or increase restrictions on resource uses in planning areas that would protect or limit impacts on natural and cultural resources and Tribal interests. For instance, regulatory plans could add to the potential complications and costs of large projects that span multiple states, such as transmission lines, pipelines, and fiber optics or in areas where the federal plan is inconsistent with the state plan. (Page 4-229)

There is ample data showing the effectiveness of state-led GRSG habitat conservation and mitigation programs. For example, since the inception of the Nevada Sagebrush Ecosystem Technical Team (SETT) initiative in 2016, Nevada has witnessed a notable resurgence in GRSG numbers attributed to SETT's targeted conservation efforts. These efforts, including invasive species control and collaborative land management practices, have improved breeding, nesting, and foraging conditions for GRSG across Nevada's sagebrush landscapes. Additionally, the introduction of the SETT's Conservation Credit System (CCS) has incentivized landowners to engage in habitat conservation. The mining industry in Nevada has actively collaborated with the SETT to preserve GRSG populations, implementing measures to mitigate their impact on GRSG habitats, and supporting conservation efforts financially.

Despite the acknowledgment in Section 4.21 regarding Wyoming's, Montana's, Oregon's, and Nevada's GRSG regulatory programs, the Draft RMPA/EIS is deficient because it does not include a State Management Alternative that recognizes these effective state-led GRSG habitat conservation and mitigation programs. BLM's acknowledgement that Wyoming, Montana, Oregon, and Nevada have "mandated...regulatory conservation actions" that "provide the greatest degree of regulatory certainty in addressing potential threats to GRSG" should obviate the need for BLM's proposed GRSG management schemes described in the Draft RMPA/EIS in these four states.

Consequently, BLM needs to prepare a Supplemental Draft RMPA/EIS to evaluate a State Management Alternative that defers GRSG habitat conservation to state GRSG regulatory programs. This recommended alternative could have the beneficial effect of creating an incentive for other states to codify their plans into regulatory requirements. Because the GRSG is not a federally threatened or endangered species, it remains more appropriate for the states to play the dominant role in regulating impacts to GRSG rather than having a one-size-fits-all federal plan like those described in the alternatives in this Draft RMPA/EIS.

III. The Draft RMPA/EIS Must Disclose Impacts of the Mineral Withdrawals in Alternatives 1 and 3 to Domestic Critical Minerals Supply Chains

Section III of our February 2022 scoping comments discussed the importance of keeping lands open to mineral location and not withdrawing the Sagebrush Focal Areas (SFAs) from mineral entry as recommended in the 2015 LUPAs. We noted that in 2016, the USGS prepared a Mineral Potential Report (MPR) to evaluate the presence of valuable minerals in the 10-million acre SFAs. This MPR identified several areas with high mineral potential. Our 2022 comments emphasized that in order to respond to the growing demand for minerals to support the energy transition, the USGS needs to prepare an updated MPR to focus on the potential for critical minerals, including but not limited to, lithium, rare earths, cobalt, and nickel that would be put off-limits if the SFAs were withdrawn from mineral entry.

Because BLM did not follow this suggestion and obtain updated mineral potential data for this Draft RMPA/EIS, it fails to comply with the NEPA requirement to take a hard look at the impacts to mineral resources associated with the sizeable mineral withdrawals recommended in Alternatives 1 and 3, or how land use restrictions in areas designated as ACECs in Alternative 6 could be the functional equivalent of a mineral withdrawal. Consequently, this Draft RMPA/EIS

is fatally flawed because it completely ignores how withdrawing vast acreages of lands with mineral potential will harm the Nation by putting urgently needed critical mineral deposits off-limits to mining. The proposed withdrawals of 10 million acres in Alternative 1 and 69.2 million acres of Priority Habitat Management Areas (PHMA) in Alternative 3 would perpetuate and likely increase our reliance on critical mineral imported from China and other foreign adversaries in the 10-state planning area.

This outcome is at counter purposes to the Biden administration's oft-stated goals to strengthen domestic supply chains for critical minerals due to the essential role that critical minerals play in the energy transition. Examples include lithium, cobalt, graphite, and manganese that are used to manufacture the lithium-ion batteries that power electric vehicles (EVs), and rare earth minerals used in magnets in EV motors and wind turbine generators.

There is widespread recognition that mining of battery minerals must substantially increase to achieve the Nation's and the world's clean energy transition objectives. The International Energy Agency (IEA)[2] predicts soaring demand for critical minerals, including lithium and other battery minerals, and shows that lithium production is currently concentrated in China. The IEA states: "In clean energy transitions, lithium is the mineral facing the fastest demand growth."[3]

Because our need for domestic sources of critical minerals and our dangerous reliance on China for these minerals is an issue of national importance and national security, it must be carefully assessed in a Supplemental Draft RMPA/EIS. Given the national significance of this issue, adding it to the Final RMPA/EIS will not be sufficient. BLM must prepare a Supplemental Draft RMPA/EIS that evaluates how the six alternatives[4] would reduce U.S. mineral production, including production of critical minerals, and increase our reliance on foreign minerals. The public must be given an opportunity to review and comment on this important issue.

The Supplemental Draft RMPA/EIS needs to evaluate the tradeoffs between increasing the country's dependence on foreign minerals versus ensuring more lands designated as PHMA are not impacted by mineral exploration and development. As discussed in Section VI below, the Federal Land Policy and Management Act (FLPMA) requires BLM to balance these and other priorities. As written, BLM has not taken the balanced approach that FLPMA demands in the Draft RMPA/EIS. BLM's singular focus to protect GRSG habitat is thus inconsistent with the resource balancing and multiple use mandates in FLPMA.

It is pointless to consider mineral potential in an after-the-fact analysis associated with the potential selection of a Preferred Alternative in the future Final RMPA/EIS that recommends a substantial mineral withdrawal analogous to Alternatives 1 or 3, a different-sized withdrawal area, or even widespread and highly restrictive ACECs that function as *de facto* mineral withdrawals, similar to

[2] https://iea.blob.core.windows.net/assets/ee01701d-1d5c-4ba8-9df6-abeeac9de99a/GlobalCriticalMineralsOutlook2024.pdf

[3] The USGS' 2016 MPR shows that the McDermitt Caldera in northern Nevada and southern Oregon has high mineral potential for lithium.

[4] Even the alternatives that do not propose a mineral withdrawal will reduce mineral production given the numerous proposed land use and seasonal restrictions that will make mineral exploration and development more difficult and costly.

Alternative 6 in the Draft RMPA/EIS.[5] BLM must consider mineral potential data in this Draft RMPA/EIS. In order for BLM and the public to fully evaluate the impacts associated with both the 10-million acre withdrawal proposed in Alternative 1 and the 69.2-million acre withdrawal proposed in Alternative 3, the agency and the public need more information about the mineral potential of these lands. Consequently, an updated and expanded MPR must be evaluated before BLM can proceed any further with this NEPA analysis. Without mineral potential data for the mineral withdrawal areas proposed in Alternatives 1 and 3, BLM's decision will not be well informed or use the best available science. The public and officials in the 10-western state planning area will be subject to an ill-informed decision with serious adverse ramifications for each of the states in the planning area and for the country at large.

BLM's analysis of the impacts of the proposed mineral withdrawals in Alternatives 1 and 3 must also acknowledge that the Nation's future mineral requirements may differ from today's needs. For example, the soaring demand for lithium for the lithium-ion batteries used to power EVs and store electricity is a recent case-in-point. Twenty years ago (the initial term for most withdrawals), this demand did not exist. Thus, the statement: "...if minerals of interest are not known to occur on the lands within the withdrawal, then the withdrawal would not have an effect." (Page 4-106) completely dismisses the point that minerals cannot be discovered on lands that are withdrawn from mineral entry during the period of the withdrawal. This shortsighted statement fails to acknowledge that withdrawn lands may contain important minerals that are currently unknown but that could be discovered in the future if these lands were not off-limits to mineral exploration and development. Because the country and the world will need many minerals in the future and may need different minerals than are currently identified, withdrawing lands is likely to jeopardize the country's future ability to satisfy its long-term mineral requirements.

We find the statement "Recommending areas for closure to the mining laws for locatable exploration or development does not restrict any activities and therefore, such recommendation does not have any impacts" (Page 4-106) misguided and off-putting because the threat of the mineral withdrawals proposed in the Draft RMPA/EIS has a chilling effect on mineral investment in lands with GRSG habitat in the 10-state planning area. BLM discloses one aspect of this chilling effect in the following excerpt from Section 4.10.4:

> "BLM will not approve a plan of operations to proceed on withdrawn lands until it verifies that each mining claim on the lands where the proposed surface disturbance will occur was valid before the date of withdrawal and continues to be valid. This BLM verification process can take several years in some cases. Additionally, operators are required by regulation to pay the cost for BLM's verification of mining claim validity. Taken together, the additional regulatory process and cost could delay or curtail mineral exploration and development on withdrawn lands

[5] If past is prologue, we are justified in our concern that BLM's Preferred Alternative in the future Final RMPA/EIS could be significantly different than the Preferred Alternative (Alternative 5) in this Draft RMPA/EIS. In 2015, BLM unexpectedly added the 10-million acre SFA withdrawal, which had not been evaluated as an alternative in the Draft EIS, to the Final EIS and LUPAs. Because of this improper last-minute change, the U.S. District Court for the District of Nevada ruled that BLM violated NEPA by failing to prepare a supplemental EIS to evaluate the addition of the SFA to the 2015 Nevada and Northeastern California GRSG LUPA. *W. Exploration, LLC v. U.S. Dep't of the Interior*, 250 F. Supp. 3d 718, (D. Nev. 2017)

during the term of the withdrawal, assuming minerals of interest occur within the withdrawn lands. Indeed, in BLM's experience, few operators have been willing to undertake the time and expense associated with verification of mining claim validity. The BLM may designate areas as ACECs as a conservation measure. Designating areas as ACECs in an RMP could impact production of locatable mineral resources because such designations would impose additional administrative and financial requirements..."

This disclosure suggests that BLM has reached the foregone conclusion that withdrawing millions of acres from mineral entry is a necessary consequence of this planning effort and that the owners of mining claims within the SFAs who may lose their claims and forfeit the investments made in exploring and developing their claims are simply collateral damage.

BLM's decision to withdraw lands from mineral entry must be subject to the NEPA mitigation hierarchy of avoid, minimize, rectify, reduce/eliminate, and mitigate at 40 CFR § 1508.1(s) in the current NEPA regulations and at 40 CFR § 1508.1(y) in the regulations that will become effective on July 1, 2024. NEPA requires BLM to evaluate ways to mitigate impacts. This requirement obligates BLM to assess ways to mitigate impacts to claim owners on lands proposed for withdrawal. If BLM deems withdrawing certain lands as a necessary and unavoidable action that has the potential to impact mining claim holders, certain mitigation measures may be required. At the very least, the size of the mineral withdrawals should be kept to a minimum and restricted to lands with on-the-ground verification that they actually contain PHMA. The withdrawal areas should not be comprised of the sweeping 10 million-acre SFAs presented in Alternative 1 or the enormous 69.2 million acres in Alternative 3 of the Draft RMPA/EIS. In some situations, mitigation may need to include compensating claim owners under the Takings Clause of the Fifth Amendment of the U.S. Constitution.

IV. The EIS Must Consider the Minimal Impact That Mineral Activities Have on GRSG Habitat

In 2016, BLM used the findings in the USGS' 2016 MPR to prepare a Draft SFA Withdrawal EIS (2016 Draft EIS) which found that withdrawing the SFA would put 1,084,109 acres of lands with high and moderate mineral potential off-limits to mineral development. We included the following table in our February 2022 scoping comments and repeat it below to show how withdrawing the SFAs would eliminate mineral exploration and mining on high mineral potential (HMP) and moderate mineral potential (MMP) lands in six states.

Table 1[6]: Acres of High and Moderate Mineral Potential in the SFAs

State	Mineral Potential	Acres within SFA	Total High and Moderate Mineral Potential Acres to be Withdrawn
Idaho	High: Moderate:	25,988 216,472	242,460
Montana	High:	57,761	101,227

[6] Modified after Table 2-2 in the 2016 SFS Withdrawal DEIS.

State	Mineral Potential	Acres within SFA	Total High and Moderate Mineral Potential Acres to be Withdrawn
	Moderate:	43,466	
Nevada	High: Moderate:	403,808 100,371	504,179
Oregon	High: Moderate:	66,581 21,133	87,714
Utah	High: Moderate:	3,452 34,025	37,477
Wyoming	High: Moderate:	1,328 109,723	111,051
Total Proposed Withdrawal of Lands with High and Moderate Mineral Potential			**1,084,109**

A similar table needs to be developed in a Supplemental Draft RMPA/EIS to show the acreages of the HMP and MMP lands associated with the proposed withdrawal of 69.2 million acres under Alternative 3.

Section 2.3.4 of BLM's 2016 Draft EIS evaluates an HMP Alternative that proposed to exclude the HMP lands identified in the USGS 2016 MPR from the SFA mineral withdrawal. Under the HMP Alternative, the SFA lands with HMP would remain open to mineral activities, subject to the land use management restrictions applicable to PHMA. Our February 2022 scoping comments recommended that this EIS should include the HMP Alternative evaluated in BLM's 2016 Draft EIS.

WMC vehemently opposes withdrawing any lands from mineral entry – including the 10-million acre SFA, as proposed in Alternative 1 in the Draft RMPA/EIS or the 69.2-million acre withdrawal proposed in Alternative 3. However, if BLM decides to continue to recommend withdrawing lands from mineral entry, BLM should exclude HMP lands from any future mineral withdrawals. Additionally, BLM must take a hard look at how a mineral withdrawal recommendation has significant potential to adversely impact national mineral security, weaken domestic mineral supply chains, and increase our reliance on mineral imports.

Another significant finding in BLM's 2016 Draft EIS was the *de minimis* impact that mining would have if the SFA lands were not withdrawn and remained open to mineral exploration and development. As discussed in the 2016 Draft EIS, the forecast footprint of mineral activities for the next 20 years would affect a miniscule 9,554 acres within the proposed 10-million acre SFA. In other words, if mineral activities were allowed in the SFAs, mineral exploration and mining *would impact less than 0.1 percent of the SFAs* during the 20-year evaluation period. (See 2016 Draft EIS, Table 2-1). Based on the findings in BLM's 2016 Draft EIS, there is no justification for BLM to propose mineral withdrawals in any of the SFAs throughout the planning area because mining in the 10-million acre proposed SFA mineral withdrawal area would have a negligible impact on GRSG and GRSG habitat.

BLM must not ignore this important conclusion in its own Draft 2016 EIS. BLM needs to prepare a Supplemental Draft RMPA/EIS that incorporates the data and analysis in its 2016 Draft EIS. The

fact that this document was never finalized into a Final EIS does not diminish the value or importance of the impact analysis and the documentation that future mining in the SFAs would only result in trivial impacts to GRSG habitat.

V. BLM Must Not Separate the SFA Withdrawal Analysis from this NEPA Evaluation

In our February 2022 scoping comments, we strongly urged BLM to consolidate the SFA withdrawal analysis with this land use planning process and development of this Draft RMPA/EIS. Our assertion in February 2022 that separating these analyses into two documents makes no sense remains true today. This land use planning process and this Draft RMPA/EIS are intricately intertwined. Because the Draft RMPA/EIS includes two withdrawal alternatives, Alternative 1 to withdraw the 10-million acre SFA and Alternative 3 to withdraw 69.2 million acres of PHMA, NEPA *obligates* BLM to perform a thorough evaluation of the impacts associated with these massive mineral withdrawals in this Draft RMPA/EIS.

BLM's statement on Page 4-106 that "Proposing and making a withdrawal is not a land use planning process" illogically dismisses BLM's duty to comply with NEPA requirements to thoroughly evaluate the impacts associated with each alternative considered in detail in the Draft RMPA/EIS. In this Draft RMPA/EIS, BLM must provide a detailed analysis of the impacts of withdrawing between 10 million acres of land under Alternative 1 and 69.2 million acres of land under Alternative 3 from operation of the Mining Law and putting these huge tracts of land off-limits to mineral exploration and mining for at least twenty years. This analysis must include a thorough disclosure of the jobs and local and state tax revenues that will be lost if lands are withdrawn from mining. It must also discuss how these withdrawals would make it harder to find domestic sources of the minerals we need, lead to an increase in the Nation's reliance on foreign minerals, and make our mineral supply chains more vulnerable to shortages and disruptions.

The recommendation to withdraw the 10-million acre SFA in the 2015 RMPA/Final EIS is not a separate action from this Draft RMPA/EIS because Alternative 1 *is* the 2015 approved RMPAs:

> Alternative 1 includes the applicable elements of the 2015 Approved RMPAs (ARMPA) that are being analyzed for potential amendment....This alternative also includes designation of some areas of PHMA as Sagebrush Focal Areas (SFA) with a recommendation to withdraw them from mineral location and entry under the Mining Law of 1872...(Page ES-3)

BLM's scheme to separate the NEPA analysis of the 2015 SFA withdrawals from this 2024 NEPA analysis improperly splits the evaluation of the same proposed action into two different documents, which does not fulfill BLM's NEPA obligations. These are obviously connected actions which must be analyzed *together*, pursuant to NEPA. Similarly, the proposed withdrawal of 69.2 million acres under Alternative 3 requires a thorough analysis in *this* NEPA document – not in some future NEPA document prepared to implement Alternative 3 if that ends up being BLM's Preferred Alternative in the Final RMPA/EIS. Again, these are connected actions and must be analyzed jointly in this 2024 Draft RMPA/EIS.

Deferring the analysis of withdrawing lands from mineral development to a future, separate minerals withdrawal EIS essentially kicks the can down the road to retrospectively evaluate the impacts to minerals stemming from a decision that has already been made. This separation does not satisfy the forward-looking alternatives analysis mandates in NEPA that require federal agencies to take a hard look at the impacts of the alternatives carried forward for detailed analysis in a NEPA document.

VI. Alternative 3 Violates FLPMA's Multiple Use Mandate and the NEPA Definition of a Reasonable Alternative

Although the Draft RMPA/EIS acknowledges that the multiple use and sustained yield mandates in FLPMA are among the planning criteria that underpin this NEPA analysis, it appears that the real driver for this document is for BLM to find ways to minimize the likelihood that the U.S. Fish and Wildlife Service (USFWS) will determine that the GRGS should be listed as a threatened or endangered species under the Endangered Species Act. BLM's sole focus on avoiding a listing determination by the USFWS has resulted in BLM's failure to achieve the appropriate resource balance that FLPMA demands.

In Section 102(a)(12), FLPMA explicitly directs that "the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands." WMC agrees that keeping the GRSG off of the list of federally threatened and endangered species is important. However, pursuit of this outcome cannot override BLM's FLPMA Section 102(a)(12) multiple use obligations by radically restricting and even prohibiting mining, livestock grazing and other uses because such widespread restrictions violate FLPMA.

The severe restrictions and prohibitions under Alternative 3 improperly subordinate BLM's FLPMA multiple use obligations and instead substitute land management actions designed to dissuade the USFWS from putting GRSG on the list of federally threatened and endangered species. By prohibiting most multiple use activities on the 69.2 million acres of PHMA throughout the 10-state planning area, Alternative 3 would categorically close this vast area and:

- Prohibit new leases for fluid minerals, saleable minerals, mineral materials and nonenergy leasable minerals;
- Preclude development of renewable energy projects;
- Withdraw these lands from location and entry under the U.S. Mining Law;
- Eliminate livestock grazing and rights of-way (ROWs) designations; and
- Designate 11,139,372 acres of ACECs specifically for GRSG management.

Because these immense closures and prohibitions violate FLPMA's multiple use mandates, Alternative 3 cannot be considered as a viable alternative pursuant to NEPA and should not be included in the Draft RMPA/EIS.

In addition to violating FLPMA, Alternative 3 also violates the Council on Environmental Quality's (CEQ's) regulations at 40 CFR 1500 *et seq* that govern preparation of NEPA documents, including this Draft RMPA/EIS. The CEQ regulations at 40 CFR § 1502.14 require federal agencies to evaluate "reasonable alternatives," which the CEQ regulations define as "a range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action." (40 CFR § 1508.1(z))

In the 2024 NEPA regulations that will become effective on July 1, 2024, 40 CFR § 1508.1(hh) defines a "reasonable alternative" to mean: "A reasonable range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action." Thus, these new NEPA regulations still require federal agencies to identify and assess *reasonable* alternatives (40 CFR § 1502.14(a)[7] and do not change the definition of a "reasonable alternative."

Section 4.12.4 of the Draft RMPA/EIS describes the severe economic impacts and socioeconomic dislocations associated with Alternative 3. The scope and intensity of these impacts are very troubling and include, but are not limited to, the following:

- 25,000 to 36,000 fewer total jobs (including 11,000 to 14,000 fewer direct jobs) would result from the precipitous drop in oil and gas production revenue and well development expenditures;

- Between $2.0 million to $2.9 billion in total labor income (including about $1.2 million to $1.6 billion less in direct labor income) would be lost;

- Economic output would be reduced by $9.2 billion to $12.8 billion compared to Alternative 1;

- Restricted oil and gas development would adversely affect fiscal revenues and could contribute to future state and local government budget shortfalls, especially in jurisdictions that rely on the taxation of minerals in place of income taxes or where taxes on mineral production currently represent the single largest source of revenue;

- The resulting budget shortfalls may affect states' and local governments' ability to maintain infrastructure and provide public services at current levels, which would adversely affect quality of life in affected communities and could further limit rural residents' access to educational opportunities, health care, and social safety net programs;

[7] 40 CFR § 1502.14: The alternatives section is the heart of the environmental impact statement...In this section, agencies shall:(a) Rigorously explore and objectively evaluate reasonable alternatives to the proposed action...The agency...shall consider a reasonable range of alternatives that will foster informed decision making.

- The reduction in economic activity associated with reduced production of locatable minerals could adversely affect jobs, labor income, economic output, tax revenue, public services, and access to lifestyles and culture associated with mining;

- The impacts of withdrawing lands from mineral entry could put a lot of strain on communities, especially those that are dependent on the mining industry;

- Prohibiting grazing on PHMA is expected to result in about 2,000 fewer total jobs (about 841 fewer direct jobs), $120 million less in total labor income (about $67.6 million less in direct labor income), and about $380 million less in economic output (about $204 million less in direct economic output), compared to Alternative 1;

- The restrictions on livestock grazing in large portions of federal allotments could impact the economic resilience of ranching and farming communities;

- Making PHMA unavailable to livestock grazing could result in increases in costs to ranchers and farmers who would have to find alternative forage for their livestock. The cost increases may lead to increases in meat prices if passed on to consumers and, in the long term, decreases in availability of meat and animal products;

- Increases in prices and decreases in availability of meat and animal products could put additional strain on households, especially those with lower incomes in rural areas, where food prices tend to be higher and a larger percentage of their disposable income goes toward food purchases; and

- There could be substantial impacts on social and economic conditions in some communities, including impacts to communities' well-being and social cohesion and impacts on access and quality of the ranching lifestyle, culture, and sense of place for those who rely on access to forage from federal land for their farming and ranching operations as well as for those who are part of the farming and ranching communities of interest and value livestock grazing on public lands.

The impacts cited above from Section 4.12.4 of the Draft RMPA/EIS of the extremely adverse socioeconomic impacts associated with Alternative 3 clearly demonstrate that Alternative 3 does not meet the NEPA definition of an "economically feasible" alternative as defined in any version of the CEQ's NEPA regulations. Including Alternative 3 in the Draft RMPA/DEIS is a fatal flaw that BLM must remedy by preparing a Supplemental Draft RMPA/DEIS that eliminates Alternative 3 from detailed consideration on the grounds that it is economically infeasible and that it is also inconsistent with FLPMA's multiple use mandates.

BLM must comply with both the NEPA regulations and the multiple use mandate in FLPMA. The agency cannot simply ignore its multiple use management obligations and manage public lands with severe multiple use prohibitions and restrictions because it seeks to minimize the likelihood that the USFWS will put the GRSG on the list of federally threatened and endangered species. BLM can only consider reasonable alternatives as defined by NEPA while concurrently authorizing a balance of multiple uses that fulfill BLM's FLPMA obligations.

VI. The Socioeconomic Analysis for Nevada Omits Key Data on Mining Tax Revenues

Section 4.12.4 understates the adverse socioeconomic impacts of Alternatives 1 and 3 to Nevada stemming from the withdrawal of the 2.8-million acre SFA in Elko, Humboldt, and Washoe counties, Nevada under Alternative 1 or the withdrawal of the 21.1 million acres of PHMA in Nevada under Alternative 3. Table A.29 "State Taxes Assessed on Hard-Rock Mining Activities on Land Types, including Federal Lands (as of 2019)" in Appendix 13 completely omits the Nevada Net Proceeds of Minerals Tax that locatable minerals, geothermal, and oil and gas producers pay in Nevada regardless of the status of the land on which their projects are located.

According to the Nevada Department of Taxation,[8] Nevada mining, geothermal and oil and gas producers paid Net Proceeds of Minerals Taxes of $174,188,235 in Fiscal Year 2021–2022 and $65,884,924 in Fiscal Year 2022-2023. In these same fiscal years, Nevada gold and silver producers paid $36,921,487 and $68,281,750 respectively in gold and silver excise taxes. These tax revenues need to be added to Table A.29 and included in the socioeconomic impacts analysis in Section 4.12.4. The loss of these tax revenue streams will significantly exacerbate the adverse socioeconomic impact analysis provided in this section. The omission of these Nevada mining tax revenues thus underestimates the adverse impacts of the mineral withdrawals in Alternatives 1 and 3.

VII. Conclusions

This Administration is sending mixed signals regarding development of the Nation's critical mineral resources on public lands. On the one hand, the Departments of Energy and Defense have awarded substantial grants and loans to companies with critical mineral projects on federal lands and continue to consider other grant and loan applications. But at the same time, the Department of the Interior through BLM's Draft RMPA/EIS is seeking to curtail mining on public lands, including lands with important critical mineral resources, by withdrawing vast areas of the western U.S. from operation of the U.S. Mining Law and prohibiting mineral exploration and development on these lands for at least twenty years. This inconsistent and incoherent approach is harming the country's ability to strengthen mineral supply chains and reduce our dependency on foreign minerals by producing more minerals from domestic mines, which are the cleanest and safest mines in the world.

Before preparing a Final RMPA/EIS, BLM must acquire a much better understanding of the foregone opportunities to develop critical mineral deposits on lands recommended for mineral withdrawal, and conduct an in-depth analysis of the national mineral security and supply chain consequences associated with putting mineral-rich lands off-limits to mining. This will require the updated and expanded MPR discussed above. Given the national importance of improving national mineral security by reducing current supply chain vulnerabilities, BLM should prepare a Supplemental Draft RMPA/EIS to allow the public an opportunity to comment on the updated and expanded MPR and the impacts to GRSG habitat associated with exploring and developing HMP lands versus putting these lands aside in withdrawn areas.

[8] https://tax.nv.gov/uploadedFiles/taxnvgov/Content/TaxLibrary/FY23%20Annual%20Report_FINAL.pdf

In developing the Final RMPA/EIS, BLM should acknowledge that mineral development projects throughout the 10-state planning area represent important opportunities for voluntary compensatory mitigation projects and funds. For projects where compensatory mitigation is consistent with valid existing rights and applicable law, project proponents could voluntarily perform remediation projects to improve damaged habitat areas or provide funding for agency-led habitat restoration efforts. This could be an especially valuable source of private-sector investment in restoring habitat areas that have been damaged by large wildfires in the planning area.

Finally, WMC suggests that responsible development of the Nation's critical mineral resources and reversing the decline in GRSG populations are both important objectives that should not be viewed as mutually exclusive. The surface disturbance due to mineral exploration and mining is localized and modest when viewed on a landscape scale. Moreover, mining disturbances are mitigated when the required reclamation is completed.

We therefore ask DOI and BLM to abandon the concept that mineral development and GRSG habitat protection are mutually incompatible. Instead, we suggest that BLM take a different approach and refocus this NEPA evaluation on how the country can concurrently pursue responsible development of important critical mineral deposits while also protecting, restoring, and enhancing GRSG habitat. The goal of this exercise should be to protect GRSG and, at the same time, supply the country with critical minerals from responsibly developed mines on federal lands. This alternative approach would fulfill BLM's obligations under FLPMA and NEPA and also achieve the important goal of reducing the country's dangerous reliance on foreign minerals.

WMC appreciates this opportunity to provide these comments on the Draft RMPA/EIS. We hope BLM will give these comments more consideration than the agency appeared to give to our February 2022 scoping comments.

Respectfully submitted:

Emily Hendrickson
WMC President

Debbie Struhsacker
WMC Co-Founder and Board Member

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR

KRISTEN JURAS
LT. GOVERNOR

June 13, 2024

Sharif Branham
Assistant Director, Resources and Planning
Bureau of Land Management
1849 C Street NW
Washington, D.C. 20515

Sonya Germann
State Director, Montana/Dakotas
Bureau of Land Management
5001 Southgate Drive
Billings, MT 59101

Quincy Bahr and Pat Deibert
BLM Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

RE: Draft Resource Management Plan Amendments (RMPA) and Environmental Impact Statement (EIS) for Greater Sage-Grouse Range-wide Planning

Mr. Branham, Ms. Germann, and staff:

As Governor of the State of Montana, I am proud of our state's track record in managing and protecting sage-grouse and sage-grouse habitat. Montana is a leader in robust, science-driven research and on-the-ground expertise when it comes to managing Greater Sage-Grouse (GSG) and the public and private lands on which it thrives. Our state agencies have the knowledge and expertise to continue managing this species successfully. I would encourage you to seriously consider the attached agency comments as you contemplate amendments to Resource Management Plans (RMPs) within the state.

In addition to reiterating and endorsing the attached state agency comments, I have concerns about the unnecessary utilization of Areas of Critical Environmental Concern (ACECs) as a tool to manage GSG. ACECs are powerful tools that can limit activities or completely exclude the public from federal land under this designation. ACECs should be used sparingly and only when absolutely necessary to protect a specific and significant value that is not otherwise protected.

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TELEPHONE: 406-444-3111 • FAX: 406-444-5529 • WEBSITE: WWW.MT.GOV

Since 2015, the State of Montana has implemented a comprehensive strategy backed by the best available science to protect and manage the species. The U.S. Fish and Wildlife Service described our program, managed by the Montana Sage Grouse Oversight Team, as the "gold standard." In addition to being superfluous, these unnecessary ACECs could break apart the diverse coalition that has, to this point, unified around Montana's GSG management strategy. It is critical to maintain this coalition and Montana's GSG strategy to balance conservation of the species with needed economic development. The preferred alternative should not include any ACECs.

Species management in Montana requires close coordination between federal and state agencies as species do not respect jurisdictional boundaries. Since 2015, the State of Montana and the BLM have operated successfully under the same RMPs. I am urging the BLM to refrain from making significant changes to the existing RMPs. Regulatory stability is good for the species, and it is good for the people of Montana.

I look forward to working together to conserve this species and I urge you to seriously consider the attached agency comments.

Sincerely,

Greg Gianforte
Governor

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TRI-STATE

June 13, 2024

Bureau of Land Management Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

Comments submitted via: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

Re: **Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning**

Dear Bureau of Land Management,

I. Introduction

Tri-State Generation and Transmission Association, Inc. (Tri-State) appreciates the opportunity to provide comments on the Draft Resource Management Plan Amendment (DRMPA) and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning (89 FR 18963). Tri-State owns and operates electric power infrastructure such as transmission lines, sub-stations, access roads, and electric generating units in the overall range of the greater sage-grouse (*Centrocercus urophasianus*) (GrSg) in the Colorado and Wyoming portions of the planning area of this DRMPA.

II. Background Information on Tri-State

Tri-State was founded in 1952 by its member systems to provide a reliable, cost-based supply of electricity. Headquartered in Westminster, Colorado, approximately 1,200 people are employed by Tri-State across five states. Tri-State is a not-for-profit wholesale power supply cooperative with 44 members, including 41 utility electric distribution cooperative and public power district members. Tri-State generates and delivers power to its member systems in Colorado, Nebraska, New Mexico and Wyoming. Together with its members, Tri-State delivers reliable, affordable, and responsible power and energy services to more than a million electricity consumers across nearly 200,000 square miles of the West through a rapidly transforming mix of energy resources.

Tri-State's Responsible Energy Plan is reducing emissions, increasing renewable resources, developing new energy services, and delivering more flexibility for its members. Tri-State has a rapidly increasing renewable generation portfolio based in wind, solar and hydropower resources. Tri-State currently employs over 1,300 MW of renewable generation. By 2030, 70% of the electricity our members use will come from clean resources. Tri-State delivers power to its members through a

P.O. BOX 33695
DENVER, CO 80233-0695
303-452-6111
WWW.TRISTATE.COOP

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transmission system that includes substation facilities, telecommunications sites and over 5,700 miles of high voltage transmission lines.

III. Support for Alternative 5

Alternative 5 provides a balanced approach which is both protective of GrSg while also accommodating necessary and important projects that benefit society. In contrast, Alternative 3 is overly restrictive and would greatly diminish the electric power sector's ongoing efforts to decarbonize, deploy new renewable projects, and upgrade electrical infrastructure. Classifying all habitat as Priority Habitat Management Areas (PHMA) under Alternative 3, designating all PHMA as an Area of Critical Environmental Concern (ACEC), and excluding new ROWs from PHMA would be highly problematic for other users of BLM lands. Unlike the other alternatives, this approach does not distinguish between priority habitat areas. Similarly, several provisions of Alternative 4 are overly restrictive such as its mitigation requirements, which are discussed in more detail below. Alternative 6 would add further protections of the ACEC designation, which is unnecessary given the GrSg protections in PHMA under Alternative 5. Alternative 5 would satisfy BLM's multiple use mandate while protecting GrSg. Tri-State requests that Alternative 5 be carried forward as the proposed RMPA, with consideration of our additional comments below.

IV. Concerns with perch deterrents

Tri-State has commented during multiple past GrSg and Gunnison sage-grouse (*Centrocercus minimus*) (GuSg) planning efforts, to explain challenges and limitations of using perch deterrents to reduce avian sage-grouse predation. Yet the DRMPA would continue to require these measures for predation reduction, such as in Table 2-18, pages 2-147 and 2-148 for Alternatives 4-6. The DRMPA also states on page 4-5 that while they "may" reduce avian predation, "efficacy is variable." Please refer to Tri-State's scoping comments on this planning effort for additional detail, which we have not re-stated entirely in this letter for brevity. We understand the desire to reduce predation, but perch deterrents increase operation and maintenance challenges for electric utilities, while also being ineffective at preventing nesting and perching by avian predators. The basis of our concern is exemplified in photo documentation of ravens and raptors defeating perch deterrents and using them to support nests (Attachment A). These photos are from a recently completed Tri-State transmission line upgrade in the range of the GuSg where the BLM required installation of perch deterrents. We encourage the BLM to avoid blanket plan provisions requiring perch deterrents, which were never meant to eliminate perching, but rather to move birds away from energized components of electrical infrastructure. The proposed RMPA should address perch deterrent use on a case-by-case basis and address a more comprehensive and landscape scale approach to reduce avian predation on GrSg. The BLM's predator management strategy should also consider the source for raven population increase in any given region (example, landfills).

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V. Designation of additional utility corridors

The DRMPA contains numerous references to and allowances for new projects occurring within "designated utility/ROW corridors." An important aspect of Alternatives 5 and 6 would be that new right-of-way projects within designated corridors would not need to comply with the disturbance caps. This approach is wise because it incentivizes reduced habitat fragmentation and disturbance by concentrating new projects at and near existing linear infrastructure. However, the DRMPA defines utility corridors as those established during the 2015 planning effort and there is no current proposal to add corridors. During our review of this DRMPA, we observed that multiple longstanding Tri-State transmission lines are not within a designated corridor. It is unclear why this is the case given that some of these transmission lines have existed on BLM lands for decades. By contrast, recent GuSg plans took a different approach on utility corridors where they are based on the locations of existing linear infrastructure rather than needing to specifically be designated. Tri-State understands that it may not be feasible at this stage to designate new corridors as part of this planning effort. However, we encourage the BLM to consider designating additional future corridors or use the more general approach from the GuSg planning effort where designated utility corridors include locations of existing linear infrastructure.

VI. Support for Glossary term Collocation (electrical lines)

The draft definition for collocation of electrical lines on Glossary page 2 reflects the safety and setback requirements inherent to locating multiple power lines near each other. We appreciate that this definition responds to Tri-State's scoping comments on the subject where we requested that collocation of power lines should use an approach more like "parallelling". Tri-State appreciates and supports the draft definition and requests it be carried forward in the proposed RMPA.

VII. Timing of disturbance restoration and compensatory mitigation

The DRMPA includes multiple references to timing requirements for compensatory mitigation and disturbance restoration to meet disturbance cap requirements. One example is in Table 2-5 applicable to Alternatives 3-6 which states that *"Compensatory mitigation should be completed prior to initiating the activity causing the need for compensation and monitored for retention and efficacy."* Another example occurs in Table 2-18 on page 2-145 for Alternatives 5 and 6 which states "*To grant a ROW based on compensatory mitigation, the compensation project must be completed prior to construction, surface occupancy, or surface disturbing activities.*"

An example related to the disturbance caps occurs in Table 2-7 page 2-29 states for Alternative 4, *"new infrastructure projects would be deferred ….. until such time as the percentage of habitat disturbance in the areas has been reduced below the cap threshold through restoration of existing disturbance to meeting habitat objectives."* Similarly, Table 2-7 page 2-37 states for Alternative 4 *"If the exception relies on compensatory mitigation, the mitigation must be completed prior to the*

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disturbance that results in the exceedance of the disturbance cap so the value of the mitigation can be accurately compared to the value of the habitat to be affected…..".

Additional clarity should be provided in the RMPA that distinguishes in-situ restoration of temporary disturbances from compensatory mitigation to offset permanent habitat impacts/loss. This is critical because it is not always feasible or practicable to complete mitigation prior to the start of construction related activities. Restoration of habitat, for example, can take many years in arid environments. The ROW Grant should have a stipulation that ties the grantee to their mitigation requirements rather than requiring completion of compensatory mitigation prior to the start of a new project.

Deferring important infrastructure projects when the disturbance cap has been exceeded by other projects/parties, combined with the requirement that disturbance restoration must be completed and meeting habitat objectives before additional disturbances could be authorized may impact utilities' ability to meet their clean power objectives. As mentioned above, reclamation of sagebrush communities can take years and many important projects would be on hold in the interim. Tri-State requests that BLM retain and carry forward the approach for Alternatives 5 and 6 described on page 2-34 of the DRMPA in Table 2-7, which states *"Compensatory mitigation would not have to be completed and functioning prior to being able to grant the exception."*

VIII. Predator management

Table 2-11 describes measures to minimize threats from predation including development of predator management plans. The predator management plan descriptions for Alternatives 3 and 4 are quite detailed and include reference to predator removal. In contrast the predator management plan description for Alternatives 5 and 6 is less detailed. It is unclear if the BLM may expect electric utilities to conduct predator control where undisturbed habitats cannot be avoided. Electric utilities are not permitted to manage wildlife, including lethal control of GrSg predators like ravens. While predator control could benefit GrSg and may be more effective than perch deterrents, predator control should be implemented on a landscape scale and is most appropriate for a State or Federal wildlife agency as a management tool. Tri-State requests additional clarity in the proposed RMPA on the scope of this provision and requests that electric utilities not be placed in a future position of needing to control predators.

IX. Adaptive management exceptions

Table 2-15 on page 2-126 lists exceptions to the limitations imposed for exceeding adaptive management thresholds. One such exception is for "*Activities essential for human health and safety in a current or likely catastrophic event (e.g., repair of dams, emergency vehicle access).*" Electric power restoration and power line repair activities should be included within the scope of this exception, despite not being specifically mentioned as an example. Electric power is an essential public service with direct links to human health and safety. Safe operation of electrical facilities is also a critical component of

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wildfire risk mitigation and to ensure reliable power to the public. The BLM should clarify that such activities are included within this exception or verify our interpretation in responses to comments on the DRMPA.

X. Colorado seasonal prohibition

Table 2-18 on page 2-148 indicates the existing seasonal prohibition between March 1 and July 15 (MD LR-6) would be modified under Alternatives 4-6 to add reference to PHMA and General Habitat Management Areas (GHMA), plus change terminology from "active" to "occupied" leks. Tri-State requests this provision be further modified. This provision reads as an outright prohibition of surface disturbing activities, for up to 4.5 months within 4 miles of an occupied lek. The U.S. Geological Survey (USGS) Western Ecological Research Center is currently evaluating sage-grouse buffers and have hypothesized that sage-grouse space-use patterns vary across their range, and thus one-size-fits-all buffer distances are likely inappropriate for most regions[1]. A blanket 4-mile buffer could result in delays to critical maintenance activities for existing facilities, which may not be warranted given other site-specific considerations. Tri-State requests that buffers are identified on project-by-project basis and consider landscape features (topography, line of sight, etc.) and existing disturbances on the landscape to determine if a proposed maintenance activity would impact occupied leks. The proposed RMPA also needs to state that emergency maintenance activities will not need to comply with any seasonal buffers, which is consistent with current BLM authorizations Tri-State holds in both GuSg and GrSg habitats.

XI. Characterization of vegetation impacts from linear ROWs

Section 4.3.1 describes the nature and type of vegetation impacts for Lands and Realty Management in the second to last paragraph on page 4-35. However, an important description of the difference between aboveground and buried utilities is missing from this description. The missing description also has relevance to other portions of the DRMPA that indicate power line burial to reduce impacts to GrSg. Construction of overhead power lines typically results in vegetation removal for access roads, structures, and structure pads when necessary. Vegetation along the entire ROW of an overhead power line is usually not disturbed and the area between towers/poles may exist in a relatively undisturbed condition. This is especially true in sagebrush ecosystems where low-stature vegetation avoids the need for intensive vegetation management to maintain clearances to conductors. This differs from vegetation management along overhead power lines in areas where forests dominate and intensive vegetation management along the entire ROW is necessary. In contrast, buried pipelines and buried electric lines result in temporary to long-term disturbance of the entire ROW. In arid environments, it is difficult during drought conditions to restore native vegetation. Noxious weed management becomes a significant long-term issue and may increase wildfire risk on the landscape, particularly in areas where cheatgrass becomes the dominant cover species. The third sentence of this paragraph on page 4-35, is an inaccurate characterization of the vegetation impacts from overhead power lines where vegetation can remain relatively undisturbed and unfragmented in between towers/poles. Tri-State suggests these

[1] https://www.usgs.gov/centers/werc/science/estimating-spatial-variation-greater-sage-grouse-lek-buffers-using-seasonal

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additional details and considerations be added to this paragraph in the final Environmental Impact Statement (EIS). We further advise that the BLM consider these details when finalizing RMPA components that direct power line burial as an alternative to overhead lines. The greater habitat impact of buried electric lines should be weighed against the potential GrSg benefit of avoiding tall structures to reduce predation. Burial of electric lines also may be infeasible due to terrain and costs, or the presence of other sensitive biological and cultural resources.

Thank you for the opportunity to provide comment on the DRMPA. Should you have any questions, please contact Chris Reichard at 303-621-5813 or chris.reichard@tristategt.org

Sincerely,

DocuSigned by:
Peter A. Berger
16623392601843F...

Peter A. Berger
Vice President, Environmental Compliance and Policy/ESG

Attachment A: Photographs of avian predators defeating perch deterrents

PAB:CFR:der

File: P3-12.15

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Attachment A – Photographs of avian predators defeating perch deterrents

Figure 1: Golden eagle perched on a conductor beneath perch discouragers placed on the davit arm of the tower

Figure 2: Red tailed hawk perched on conductor to the side of perch deterrents

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Figure 3: Raven perched on a deterrent spike

Figure 4: Raven perched next to deterrent spike

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Figure 5: Raven nest built into perch deterrent spikes

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May 14, 2024

Pat Diebert
BLM Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, Utah 84101

re: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning. Areas of Critical Environmental Concern. BLM_HQ_FRN_MO4500174493 and DOI-BLM-WO 2300-2022-0001-RMP-EIS

Dear Ms. Diebert:

The Wyoming Farm Bureau Federation appreciates the opportunity to provide comments on the Areas of Critical Environmental Concern (ACEC) in the Greater Sage Grouse Draft Environmental Impact Statement (GRSG DEIS). Our nearly 2,500 member families across the state of Wyoming have continually followed the GRSG. In addition, the WyFB has had a longstanding policy in support of multiple use of federal lands. ACECs would be a clear violation of this policy.

In many recent BLM proposed rules, ACECs have been thrust into the spotlight of federal land management strategies. The narrow management of ACECs will certainly not help the GRSG thrive, but in fact, there will be detrimental response within the confines of ACECs should they be designated. Essentially ACECs are de facto wilderness areas and do nothing to help the GRSG, only exacerbate the pressures by predators, wildfire, and broad stroke management that has little positive impact.

It is well-cited in literature that ravens, red foxes, and skunks are unique predators of the GRSG. Lack of managing these predators within ACECs, which is a condition of most of these areas, would cause the GRSG more harm. For example, lethal control of coyotes has

been suggested to have positive impacts on sage grouse. Although studies on predator control and impacts on GRSG are limited, this avenue seems very promising despite the numerous potential roadblocks to lethal predator control.

Traditional management of wildfire suppression across most federal lands that has occurred for many decades is a prime example of why ACEC designations would not be helpful in ensuring that GRSG populations flourish. Lack of appropriate fuels management in intensely protected areas leads to vegetative overgrowth and devastating wildfires. These fires burn with higher intensity and leave lasting impacts across the landscape. Neither of which benefits the sagebrush ecosystem mosaic needed for GRSG habitat.

The broad stroke management within ACEC designations do not serve a positive purpose for maintaining vulnerable populations of animals, especially not the GRSG. History suggests that prior to habitat fragmentation and widespread human and agricultural uses of the lands in question, had little adverse impact on GRSG populations.

Considering the protectionist approach to the proposed ACECs in the GRSG DEIS, it is critical the BLM take a step back and focus on the impacts that protection and preservationist agenda will have on the GRSG, especially in Wyoming. Items like predator control, wildfire control, and management for multiple uses should be top of mind when continuing the EIS process. Thank you again for the opportunity to comment.

Sincerely,

Kelly Carpenter

Kelly Carpenter
National Affairs
Wyoming Farm Bureau Federation

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Via BLM ePlanning Website: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

June 13, 2024

BLM Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

Pat Deilbert
National Sage-Grouse Conservation Coordinator
BLM Wyoming State Office
5353 Yellowstone Road
Cheyenne, WY 82009
BLM_HQ__Planning@blm.gov

Re: Comments on the Greater Sage-Grouse Draft Resource Management Plan Amendment and Draft Environmental Impact Statement for Greater Sage-Grouse Conservation

Coeur Mining, Inc. (Coeur) is a U.S.-based precious metals mining company with four wholly-owned operations in the U.S., employing approximately 2,100 people. One of these operations is the Rochester silver-gold mine in Nevada, which has been in operation since 1986 and is the third largest primary silver mine in the United States. Coeur is one of the largest employers in Pershing County, Nevada, with over 370 full-time employees.

Coeur appreciates the opportunity to provide comments on the Bureau of Land Management's (BLM) Greater Sage-Grouse Draft Resource Management Plan Amendment and Draft Environmental Impact Statement (RMPA / DEIS). These comments are in response to the Notice of Availability (NOA) published by the BLM on March 15, 2024.[1] Coeur commends the BLM for its efforts to improve the efficiency and effectiveness of greater sage-grouse (GRSG) management. Furthermore, Coeur supports the BLM's focus on minimizing threats from predation, mitigating impacts to habitats, adaptive management, and its recognition that some habitat management concerns are more effectively addressed at the local level.

While Coeur supports the BLM's efforts to avoid listing the GRSG as an endangered species and is committed to the responsible use and reclamation of public lands, we have concerns about the restrictions imposed by several of the alternatives analyzed in the RMPA / DEIS.

[1] 89 Fed. Reg. 18,963 (March 15, 2024).

3For example, we are concerned that the RMPA / DEIS does not address how the proposed mineral withdrawals in the RMPA / DEIS could increase the nation's dependence on foreign sources for minerals. This omission by the BLM poses a threat to our national minerals security and further compromises our already fragile domestic mineral supply chains.

In addition, we would like to note that the complexity of the RMPA / DEIS makes it difficult to identify which parts of previous GRSG plans apply to each proposed alternative. The alternatives mix elements from the 2015 and 2019 plans with new proposals, causing overlaps and inconsistencies. For instance, Alternatives 1 and 2 include aspects of both previous plans. Some alternatives have provisions similar to others but with different restrictions, making them hard to understand. If we and our mining colleagues, with our expertise in land management and GRSG conservation, find the alternatives confusing, it may be even more challenging for the general public. The descriptions violate NEPA's requirement for clear and understandable documentation for both decision-makers and laypersons.[2]

We urge the BLM to incorporate the following comments into the Final RMPA and EIS (RMPA / FEIS). We also urge the BLM to consider producing a Supplemental Draft Resource Management Plan Amendment/Environmental Impact Statement to provide the public with a clear understanding of the implications of the proposed mineral withdrawals outlined in Alternatives 1 and 3, in addition to the designation of extensive Areas of Critical Environmental Concern (ACECs), which serve as a de facto mineral withdrawal.

A. Adaptive State Management Should Be Better Integrated in the RMPA / FEIS

As the BLM finalizes the RMP, it is critical to consider that the years of dedicated conservation work by western states and local governments to protect the GRSG habitats in each state necessitate tailored management strategies. Additionally, the BLM has been effectively managing GRSG habitats across the West in accordance with plans incorporating robust protective and restorative measures. These include differentiated levels of protection in Priority Habitat Management Areas (PHMA) and General Habitat Management Areas (GHMA), adapted according to targeted habitat needs.

Given the existing safeguards under current management, the BLM should carefully consider the mandates of the Federal Land Policy and Management Act (FLPMA) and its implementing regulations concerning GRSG protection, particularly when evidence suggests that these populations are stable or increasing under the existing extensive protection framework.

Section 4.21.1 of the RMPA /DEIS recognizes the effectiveness of regulatory measures by the United States Fish and Wildlife Service (USFWS) and state plans in reducing threats to GRSG populations within approximately 90% of their breeding habitat. Since the inception of the Sagebrush Ecosystem Technical Team (SETT) initiative in 2016, Nevada has

[2] For this reason alone, an extension of the comment period is warranted, and we request additional time to evaluate the RMPA / DEIS.

witnessed a notable resurgence in GRSG numbers, attributed to SETT's targeted conservation efforts. These efforts, including invasive species control and collaborative land management practices, have improved breeding, nesting, and foraging conditions for GRSG across Nevada's sagebrush landscapes. Additionally, the introduction of the Conservation Credit System (CCS) under SETT has incentivized landowners to engage in habitat conservation.

The mining industry in Nevada has actively collaborated with SETT to preserve GRSG populations, implementing measures to mitigate their impact on GRSG habitats and supporting conservation efforts financially. However, the RMPA / DEIS does not fully account for successful state implementation programs like Nevada's, which have significantly increased GRSG populations. The analysis lacks an alternative for states with successful programs, such as SETT and CCS. BLM's one-size-fits all approach fails to adequately consider individual state sponsored initiatives that have proven successful. Furthermore, BLM's approach has the potential of destroying state programs that are successfully conserving GRSG if additional federal mandates place too great of a burden on users of public lands. The BLM should consider an alternative that allows deferring to states' proven successful programs and considers impacts to existing conservation programs.

Accordingly, the BLM should develop a Supplemental Draft Resource Management Plan Amendment/Environmental Impact Statement that considers an alternative where the conservation of GRSG habitats is guided by state regulatory frameworks. Introducing this State Management Alternative could offer significant benefits, including serving as a motivation for other states to formalize their conservation strategies into regulatory mandates. Given that the GRSG is not listed as a threatened or endangered species at the federal level, it is reasonable for states to lead in managing GRSG: "the states have primary legal responsibility for wildlife protection and administration."[3] While the owner of the land holds the key to the production of the land and therefore management of habitat conditions, these doctrines create a necessary partnership that the BLM must acknowledge and reflect in its policies regarding the management of GRSG. BLM has failed to adequately consider, recognize, and incorporate state wildlife management programs into the proposed RMPA / DEIS.

B. The RMPA/ DEIS Must Analyze Impacts of the Mineral Withdrawals on Domestic Mineral Production

The current RMPA / DEIS does not acknowledge the significant impact that extensive withdrawals of land will have on the nation. These withdrawals would effectively render mineral deposits inaccessible for mining and escalate our dependence on foreign sources for minerals.

[3] National Research Council (US) Committee on Agricultural Land Use and Wildlife Resources. Washington (DC) National Academies Press (US) (1970).

This result contradicts the Biden administration's stated goals to reinforce domestic supply chains.[4] Domestic sourcing of gold and silver is crucial for the renewable energy transition as it ensures a stable and reliable supply of these essential minerals, reducing dependency on foreign imports and enhancing national security.[5] Gold and silver are poised to play crucial roles in the renewable energy transition due to their exceptional conductive and reflective properties. Gold is integral in enhancing the efficiency and longevity of photovoltaic cells and is also used in reflective coatings for solar panels, improving energy absorption. Similarly, silver is essential in photovoltaic cells, where its superior electron conduction significantly boosts solar panel efficiency. Furthermore, silver's high conductivity is leveraged in batteries and supercapacitors for energy storage, as well as in the conductive components of EVs. Together, gold and silver contribute to the development of efficient, durable, and sustainable renewable energy technologies, supporting the global shift towards cleaner energy sources. In 2023 alone, the demand for silver in photovoltaic applications reached a new high of 193.5 million ounces, reflecting a substantial 64% increase from the previous year.[6]

Given the importance of domestic sourcing for these minerals, as well as others, and the considerable risk of relying on imports, it is essential to perform a detailed assessment in a Supplemental RMPA / DEIS. Adding this to the RMPA / FEIS is not sufficient, as public engagement and feedback are imperative to BLM's examination of how the six alternatives would lower U.S. mineral production and enhance our dependency on foreign minerals.

Moreover, the Supplemental RMPA / DEIS should weigh the trade-offs between increased reliance on imported minerals and the protection of additional lands designated as PHMA from mineral exploration and development. FLPMA mandates that BLM balance these and other competing interests.[7] Currently, the RMPA / DEIS falls short of the balanced approach required by FLPMA, with a singular focus on GRSG habitat protection that is at odds with its stipulations for resource balance and multiple use.

Addressing potential mineral resources at a later stage, after possibly adopting a Preferred Alternative that includes substantial mineral withdrawals, misses the mark. Similarly, the ACECs, which effectively function as mineral withdrawals, should not be considered only in retrospect. The RMPA / DEIS should integrate mineral potential data now, enabling BLM and the public to fully assess the impacts of the withdrawals.

BLM's analysis should also prepare for future mineral needs, which are likely to evolve. Just two decades ago, the current high demand for mined lithium was unforeseen. The RMPA /

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[4] Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, 87 Fed. Reg. 19775 (Mar. 31, 2022).
[5] *See*, e.g., Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act, Nov. 18, 2021; E.O. 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, Dec. 8, 2021.
[6] The Silver Institute, Silver and Solar Technology, https://www.silverinstitute.org/silver-solar-technology-2/.
[7] *See* Section 4.10.4 of the RMPA / DEIS. FLPMA mandates that "the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands." 43 U.S.C.A. § 1701.

DEIS's assertion that a lack of known minerals within withdrawal areas means that various mining restrictions will have no effect dismisses the possibility that significant minerals could be discovered if the lands were not off-limits for exploration and development. Withdrawing lands without considering future mineral needs could jeopardize the nation's ability to satisfy long-term mineral demands.

The RMPA / DEIS's assertion that closing areas to mining will not have an impact undermines valid concerns.[8] The BLM neglects to consider the deterrent effect such proposed withdrawals have on mineral investment, especially where GRSG habitat exists in the planning region. BLM itself notes the deterrence to operations on withdrawn lands due to the lengthy and costly verification process for mining claim validity.[9]

These impending withdrawals, perceived as inevitable outcomes of this planning exercise, suggest inadequate consideration of the potential losses for claim owners. NEPA's mitigation strategy at 40 CFR § 1508.1(s)—to avoid, minimize, rectify, reduce, or mitigate impacts—must guide BLM's decisions regarding land withdrawal. Should withdrawals be deemed necessary, the scope should be minimized to verified PHMA lands. Any withdrawals or de facto withdrawals through the utilization of ACECs must fully comply with FLPMA and NEPA. Broad withdrawals are not justified and compensatory measures for claim owners may be required under the Takings Clause of the U.S. Constitution.

C. Flaws in Sage-Grouse Habitat Mapping Should Be Addressed

Coeur submitted comments on the 2018 Nevada and Northeastern California Draft Resource Management Plan Amendment and Draft Environmental Impact Statement for Greater Sage-Grouse Conservation (2018 RMP DEIS), expressing concerns about mapping errors and unsupported restrictions. While acknowledging the BLM's aim to address threats to greater GRSG habitat through mapping, Coeur noted flaws in the process. These flaws resulted in the arbitrary designation of previously disturbed lands as "priority" habitat management areas, with extreme restrictions. Additionally, errors in the final EIS led to the misclassification of non-habitat areas as PHMAs and "best of the best" Sagebrush Focal Areas (SFAs), imposing unwarranted restrictions.

Coeur emphasized the importance of accurate habitat mapping based on ground data rather than modeling and advocated for managing SFAs based on actual habitat conditions. Coeur recommended removing landscape-scale habitat designations from the 2018 RMP EIS and replacing them with a single designation reflecting the historic range of GRSG habitat and incorporating field-verified data into the analysis.

[8] According to the RMPA / DEIS, "Recommending areas for closure to the mining laws for locatable exploration or development does not restrict any activities and therefore, such recommendation does not have any impacts." Page 4-106 of Section 4.10.4.
[9] See Section 4.10.4 of the RMPA / DEIS.

We remain concerned about flaws in GRSG maps; without accurate underlying data, the BLM cannot "make evidence-based decisions guided by the best available science and data."[10]

D. Sagebrush Focal Areas, Net Conservation Gain, Uniform Lek Buffer Distances, Travel Restrictions, and Compensatory Mitigation Should Not Be Utilized in the RMPA / FEIS

The Sagebrush Focal Areas (SFAs), net conservation gain, uniform lek buffer zones, disturbance and density caps, adaptive management triggers, and travel restrictions in the 2015 ARMPAs are landscape-scale management provisions that are inappropriate, given Congress's revocation of the Planning 2.0 Rule, and contravene FLPMA's underlying principles.

Uniform lek buffers, seasonal restrictions, noise restrictions, disturbance caps, and required design features should be eliminated and replaced with project-specific conditions based on field-verified data. These land use restrictions substantially interfere with a mining claimant's rights to explore and develop its mining claims and to enter and occupy public lands for mining purposes.

The compensatory mitigation requirements outlined in the RMPA / DEIS are not consistent with FLPMA. Section 302 provides that public land uses must prevent unnecessary or undue degradation. It does not require or authorize compensation or mitigation for unavoidable impacts (e.g., necessary and due impacts) associated with the use of public lands.

Further, for mineral activities conducted pursuant to the U.S. Mining Law, FLPMA specifically prohibits impairment of a claimant's rights under the Mining Law of 1872.[11] Pursuant to FLPMA and the U.S. Mining Law, BLM's discretionary authority is limited to preventing unnecessary or undue degradation, making the unnecessary or undue degradation standard the one consistent with claimants' rights under the U.S. Mining Law, as amended by FLPMA. BLM should not require mineral project proponents to provide mitigation, including compensatory mitigation, that exceeds the unnecessary or undue degradation standard.

Unnecessary or undue degradation must be determined on a site-specific basis to determine which impacts are avoidable (i.e., unnecessary and undue) and which impacts are unavoidable (i.e., necessary and due) in order to develop the mineral project. As a result, a one-size-fits-all mitigation standard or uniform ratio is not appropriate for mineral projects.

Compensatory Mitigation. The RMPA / FEIS should specify that compensatory mitigation does not apply to activities conducted pursuant to the U.S. Mining Law and authorized under

[10] Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking (Jan. 27, 2021), available at: https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/memorandum-on-restoring-trust-in-government-through-scientific-integrity-and-evidence-based-policymaking/. *See also* Framework for Strengthening Federal Scientific Integrity (Jan 2023), available at https://www.whitehouse.gov/wp-content/uploads/2023/01/01-2023-Framework-for-Federal-Scientific-Integrity-Policy-and-Practice.pdf.

[11] 43 U.S.C. § 1732(b).

the 43 CFR Subpart 3809 regulations. Although compensatory mitigation proposed by project proponents is a valuable resource in the conservation of GRSG, it should remain strictly voluntary. It is also critical to recognize that compensatory mitigation is not universally necessary. For example, the BLM imposes rigorous reclamation protocols for hardrock mining on federal terrain. BLM acknowledges that the GRSG prefers expansive, undisturbed tracts of land. Given this, the comprehensive nature of reclamation activities—such as large-scale land surface reconstruction, waterway and reservoir restoration, wildlife habitat creation, and complete area revegetation—effectively meets the life-stage needs of the GRSG. Hence, additional compensatory mitigation might be redundant, unnecessary, or even detrimental. Consequently, when such voluntary conservation measures are recognized and willingly enacted, they should be properly considered and valued within these management amendments for their contributions to GRSG preservation.

Further, the existing phrasing in Section 2.5.3 of the RMPA / DEIS—that mitigation "should be completed prior to associated actions occurring"—lacks clear metrics for evaluation. Mitigation through habitat restoration cannot logically precede the disturbance necessitating such mitigation. BLM's expectations necessitates further explanation, and we ask for the BLM to revise the management plans to resolve these issues and provide clear guidance.

Lek Buffers. We are also concerned that the BLM has incorporated the "active lek" definition from the Western Association of Fish and Wildlife Agencies (WAFWA) into its management plans. This new definition overrides the nuanced insights and efforts of state and local experts, who are skilled in assessing GRSG populations. Unfortunately, the changed definition unnecessarily extends the timeframe during which a disused lek remains categorized as active, imposing undue constraints on development with minimal to no examination of the actual effects on the GRSG. Such an interpretation could inadvertently and unnecessarily expand the number of leks protected.

Further, as a general matter, lek buffers are indiscriminate measures that fail to address the inherently variable nature of the GRSG habitat. The consequential impact is an excessive limitation on the use of federal lands under the guise of GRSG protection, which, in effect, prohibits development even on lands that do not serve as habitat or are only marginal environments for the GRSG.

Along with compensatory mitigation, lek buffers are included in the category of one-size-fits-all measures premised on landscape-scale land use planning concepts. Lek buffer zone restrictions should be developed based on field-verified data on a case-by-case basis that takes topography into account. Coeur understands that it may be appropriate to limit certain activities near active leks during the active breeding season; however, once it has been determined that the lek breeding season is over for the year, lek buffer zone restrictions should not apply.

E. Inadequate Consideration of Socioeconomic Impacts for Nevada; Missing Data and Tax Revenues Should Be Addressed

The alternatives do not adequately consider the negative socioeconomic effects for Nevada. Table A-29 in Appendix 13, labeled "State Taxes Assessed on Hard-Rock Mining Activities on Land Types, including Federal Lands (as of 2019)," does not include the Nevada Net Proceeds of Minerals Tax paid by locatable minerals, geothermal, and oil and gas producers in Nevada, regardless of the land's status.

According to the Nevada Department of Taxation,[12] Nevada mining, geothermal, and oil and gas producers paid Net Proceeds of Minerals Taxes of $174,188,235.55 in Fiscal Year 2021 – 2022 and $65,884,923.89 in Fiscal Year 2022-2023. In these same fiscal years, Nevada gold and silver producers paid $36,921,487.09 and $68,281,749.51, respectively, in gold and silver excise taxes. These tax revenues should be added to Table A-29 and considered in the socioeconomic impacts analysis in the RMPA / DEIS.

F. ACECs in Alternatives 3 and 6 Should Be Removed from the RMPA / FEIS

We recognize that within the BLM's Preferred Alternative, Alternative 5, the designation of ACECs has been omitted, a decision we support. Of all the alternatives, Coeur believes Alternative 5 is the least detrimental to mineral production on Federal lands, as it does not recommend any lands for withdrawal and has the fewest restrictions on land use. However, Alternative 5 has its own flaws. For example, while the BLM reduces HMA overall, it shifts some GHMA to PHMA, which we have observed within our mining claims. This shift results in an unnecessary increase in PHMA, restricting development and infrastructure projects, including mining. Coeur urges the BLM to reevaluate its shift from GHMA to PHMA and update this alternative accordingly.

Coeur is concerned about Alternatives 3 and 6, which include ACECs. We strongly recommend that the final plan exclude ACECs. The current plan already imposes ample safeguards for preserving GRSG habitats, such as restrictions on surface occupancy, timing limitations, and disturbance caps. Adding ACECs would be redundant and could unnecessarily hinder responsible development. Additionally, broad use of ACECs operates as a de facto mineral withdrawal. Alternative 6, mirroring Alternative 3 in terms of ACECs, is more restrictive than necessary, closing lands to mineral leasing even in areas that may be poor habitats for the GRSG. These extensive land-use restrictions could severely impact the mining industry and other sectors relying on federal land.

Designating 11,139,472 acres of ACECs for GRSG management (in Alternative 3) would not only harm the mining industry but also negatively affect local, state, and national economies by reducing royalty payments and tax revenues.

Furthermore, these alternatives disregard the BLM's multiple-use mandate under FLPMA by precluding resource development across GRSG habitats. Given the potential economic

[12] https://tax.nv.gov/uploadedFiles/taxnvgov/Content/TaxLibrary/FY23%20Annual%20Report_FINAL.pdf

repercussions and the overly restrictive nature of Alternative 3 and Alternative 6, Coeur urges the BLM to reconsider and exclude ACECs in the final plan.

Conclusion

We strongly urge the BLM to modify its plans to reflect our concerns and to complete a draft supplemental EIS. As they stand, the current GRSG plans will impede the necessary production of domestic minerals in the United States. This could have severe consequences for national mineral security and the supply chain, which requires additional analysis.

It is imperative that BLM gain a comprehensive understanding of the missed opportunities to develop critical mineral deposits on lands recommended for mineral withdrawal. Additionally, BLM must conduct an in-depth analysis of the national mineral security and supply chain consequences associated with putting mineral-rich lands off-limits to mining.

We request that these modifications be made to ensure the plans are practical and do not hinder essential mineral production. We look forward to seeing the necessary adjustments in the final plans and to continued participation in what we hope will be a productive and efficient process. Should you have any questions or require further discussion, please feel free to contact me at twest@coeur.com or (312) 489-0846.

Sincerely,

Terri West

Terri West
Permitting Manager
Coeur Mining, Inc.

Jim Hagenbarth
Hagenbarth Management
PO Box 1128
Dillon, MT 59725

May 22, 2024

BLM Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

RE: Comments on BLM Sage Grouse Plan

To Whom It May Concern:

Our family has been using livestock as a tool to cause the disturbance necessary to enhance the ecological health of the grazing resource in southeastern Idaho and southwestern Montana continuously since 1870. I personally have been involved in writing the 2006 Idaho Sage Grouse Plan representing the Upper Snake Sage Grouse Working group on the Sage Grouse Advisory Committee. Much attention has been given this sagebrush obligate by litigants for the express purpose of removing grazing on BLM throughout the West. If this were to happen, the federal agencies would lose the basic tool available, the public land rancher and their livestock, that is essential to maintain the ecological function of the sage brush ecosystems on grazing lands in the west. The public land rancher and their livestock are irreplaceable as we provide resource management as BLM permittees necessary for the BLM to fulfill their obligation to society of managing the rangeland resources in the West.

As dedicated rangeland managers we have recognized for decades how responsible livestock grazing enhances the resource and a recent University of Idaho study has proven that grazing provides many benefits to the resource and the sage grouse species. This grazing also helps control invasive species and fine fuel loads. Alternative 3 is a nonstarter for the responsible management of the resource and would result in lost opportunities for collaborative conservation practices and multiple use mandates the BLM has. Over the years the BLM and the livestock grazers have developed monitoring along with standards and guidelines that promote productive grazing practices that benefit the resource and the species. Additional grazing restrictions for grazing permits will only be counterproductive for the resource and consequently the grouse. If there are a site specific instances of resource harm caused by grazing, they should be dealt with on a site specific basis and not with range wide prescriptions. The BLM has to tools to manage for these occurrences.

In working in sagebrush ecosystems for 60 years and working with sage grouse guidelines developed in sage grouse plans, it is apparent that there are different sage brush ecosystems that are site specific in nature and need to be managed based on ecological site characteristics. Using a one size fits all is not productive or effective. Local prescriptions need to be used and top down decisions can be very harmful. To develop the potential that beneficial livestock disturbance can provide, it is essential to allow the development of rangeland infrastructure to enhance this benefit. Positive rangeland improvements should not be restricted by the plan.

My personal management of the sagebrush habitat we influenced over the last 50 has been focused on the diversity of the seral stages of succession of native perineal grasses and forbs and brush species that are native to our landscape. A diverse ecologically functioning sagebrush ecosystem provides the best habitat to support all sagebrush obligates. Promoting a specific sagebrush seral stage of succession based on a cookbook approach of a range wide plan for a specific sage grouse life cycle need is counterproductive. In Idaho it is important that the alternative picked by the BLM resemble the collaborative plan developed in Idaho to enhance the sagebrush ecosystems in Idaho. Alternative 5 best addresses my concerns in regard to managing the sagebrush ecosystem to enhance its ecological functionality which best benefits the sage grouse in Idaho.

Sincerely,

Jim Hagenbarth

HAGENBARTH
PO Box 1128
Dillon, MT
59925

BILLINGS MT 591
22 MAY 2024 PM 2 L

BLM Utah State Office
Attn: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

84101-143425

Board of Commissioners
Converse County, Wyoming

107 No. 5th St., Suite 114 • Douglas, WY 82633-2448 • 307-358-2244 • Fax 307-358-5998
Jim Willox, Chair • Rick Grant, Vice-Chair • Robert G. Short • Mike Colling • Trent Kaufman

June 13, 2024

Greater Sage-grouse Land Use Plan Amendments EIS Comments
ATTN: HQ GRSG RMPA
U.S. Bureau of Land Management - Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101

Submitted via Federal eRulemaking Portal
Portal: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning
(Federal Register/Vol.89, No. 52/Friday, March 15, 2024/Notices)

Dear Ms. Pat Deibert:

On behalf of the Converse County Board of Commissioners (County), please accept this letter as comments for the Bureau of Land Management's (BLM) Greater Sage-grouse (GrSG) Draft Resource Management Plan Amendment (DRMPA) and Draft Environmental Impact Statement (DEIS). The management of GrSG continues to be of great importance to us and working with federal agencies to pursue a balance between Sage-grouse conservation, multiple use of public lands, energy development and the protection of private property is critical to the long-term health of our County and the State of Wyoming.

As a member of the Wyoming County Commissioners Association (WCCA), Converse County has been actively engaged in the GrSG RMPA process, today and historically during the 2015 and 2019 plan amendments. In addition, we have participated in the Governor's Executive Order process including the development of Wyoming Executive Order 2015-4 and 2017-2, and most recently the updated Executive Order 2019-3. The County has demonstrated through numerous efforts that we have a vested interest in proactive management of GrSG to prevent a threatened or endangered listing under the Endangered Species Act (ESA).

In Wyoming, counties serve as a legal arm of the state entrusted with carrying out statutory and regulatory goals at the local level. Counties operate at the forefront to ensure our communities are economically vibrant, safe, and healthy places to live and work. Wyoming counties serve as partners and co-regulators of the 18.4 million acres of BLM surface lands and 42.9 million acres of federal mineral estate that fall within our jurisdictional boundaries and uniquely contain varying percentages of federal, state, and private land, which need thoughtful management. Specifically, Converse County lands are comprised of approximately 14% *federal surface* and an estimated 60% *federal minerals*.

Furthermore, as co-regulators, Converse County has prepared the Converse County Natural Resource Management Plan dated July 5, 2022[1] to serve as the basis for communicating and coordinating with the federal government and its agencies on land and natural resource management issues. Wyo. Stat. § 18-5-208(b). Communication, coordination, and collaboration with the BLM is vital, especially where significant BLM land and minerals exists, and management decisions can significantly impact the regulatory framework, customs, culture, and socioeconomics of our counties.

As partners, Counties work diligently to support the work of our federal land managers to overcome shared challenges and achieve mutual goals. Our counties actively participate with Wyoming BLM field offices and the Wyoming State BLM office on National Environmental Policy Act (NEPA) projects, trainings and presentations, and special initiatives. This proposed Plan Amendment is no exception, as Wyoming counties participated as cooperating agencies in BLM meetings and provided administrative draft comments, where allowed.

In response to this DEIS, Converse County submits the following detailed comments for BLM's consideration specific to this plan amendment:

I. General

- State of Wyoming – Converse County endorses, and incorporates by reference, comments submitted by the State of Wyoming.

- Wyoming County Commissioners Association (WCCA) – Converse County endorses, and incorporates by reference, comments submitted by WCCA.

II. Support for the Wyoming GrSG Executive Order 2019-3 (EO) and State Alternative

Converse County has gone on record numerous times, strongly supporting BLM's alignment with the Wyoming EO to the greatest extent possible. Converse County believes the steps taken by the BLM in the past to align with the EO is critical to successful population and habitat management. Further, coordinating and combining resources between the state, local governments and federal agencies ensures the success of long-term management approaches that benefit the species.

The creation of the Sage-grouse Implementation Team (SGIT), an on-going process occurring between a cross section of stakeholders representing a multi-jurisdictional, cross-governmental and citizen-inclusive collaborative working group, focused on developing a satisfactory management strategy to protect GrSG

[1] Converse County Natural Resource Management Plan dated July 5, 2022. ConverseCounty_NRMP_Final_06.07.2022.pdf.

and its habitat. The regulatory framework ultimately developed by SGIT and incorporated into the Wyoming EO resulted in the support of the United States Fish and Wildlife Service (USFWS) as a regulatory mechanism that would in fact protect long-term viability of Sage-grouse habitat and Sage-grouse populations; thereby, avoiding a listing under the ESA.

Wyoming has worked diligently to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. Many of the issues BLM is now readdressing in this latest series of NEPA analysis includes: Priority Habitat Management Area (PHMA) mapping, habitat objectives, approaches to minimizing surface disturbance in PHMA, effects of livestock grazing, mitigation strategies including compensatory mitigation, mitigation recommendations for fluid mineral development within PHMA and General Habitat Management Area (GHMA), wild horse and burro management, adaptive management prescriptions and strategies for short-and-long term monitoring, which are all addressed in depth by the Wyoming EO.

BLM should continue to join Wyoming in supporting this EO and the regulatory framework as being the most effective for protecting the species and its habitat and allowing for a flexible strategy addressing changing conditions in a timely manner.

To this point, the State of Wyoming submitted a proposed State Alternative to be analyzed in this DEIS, which provided consistency with the EO. BLM failed to incorporate that proposed state alternative in the analysis as stating it was submitted to BLM too late in the process to be included as a stand-alone alternative. The County strongly encourages BLM to include or acknowledge the State's Alternative in the Final EIS with a sufficient explanation as to why it was not addressed in the analysis to date.

III. Cooperating Agency Process

The cooperating agency process was not without disagreement or frustration as our opportunity to engage with the federal agency, as outlined by the Counsel of Environmental Quality's (CEQ) NEPA regulations and was written into our MOUs, was ignored by the BLM. When these conflicts arose, Wyoming counties did everything in our power, and in accordance with our MOUs, to raise concerns expeditiously to resolve issues, as expressed in our candid conversations and frank letters.

While the DRMPA expresses numerous successes for cooperation throughout the process, there were certainly places that could have been improved. We also realize that the BLM is generically referred to, however, it must be clarified that this process was not run by the Wyoming state office but rather BLM Headquarters. This enlarged scale may be partly to blame for process failures during the cooperating agency process.

Unfortunately, Wyoming counties were powerless in directing how the BLM ran its cooperating agency process and meaningful opportunities for participation in the amendment process were far and few between. In an attempt to remedy this problem, Wyoming counties verbally requested improvements and sent numerous letters asking the BLM to improve the cooperating agency process and work in good faith with cooperators.

Our first letter in June of 2023 asked the BLM to develop a regular schedule of meetings (previous meetings were sprung on cooperators with minimal notice), to provide documents to review before the

meetings, and to have the individuals at the BLM actually in charge of drafting the documents in the meetings. BLM did set up regular meetings and invited members of BLM HQ to participate, but documents were not shared with cooperators in advance of ,or after, the meetings.

Our second letter in August of 2023 requested the BLM follow its MOU which detailed how cooperators would be assisting in the determination of the purpose and need, development of the alternatives and management prescriptions, along with an estimation of effects of implementing each alternative. Up to this point, cooperators had only been used as editors of small portions of the management prescription tables (never impact analysis), without having the benefit of previously discussing the management prescriptions in a cooperating agency meeting.

The Western Governors' Association (WGA) wrote a similar letter to the BLM outlining concerns that it had with the mapping process, the lack of inclusion of state plans as separate alternatives, and inconsistent information shared to members of its taskforce. This letter prompted the BLM to engage the WGA Taskforce in cooperating agency meetings. While a positive development for Taskforce members, counties serving as cooperators were not invited. Additionally, it became clear that the BLM was treating the Taskforce differently as it began to share many of the documents requested by counties with the Taskforce, albeit with a disclaimer "that these documents not be shared beyond the SG Task Force."

Our third letter in December of 2023 expressed our exasperation of being given an administrative draft, most of which we had never seen or discussed, to review over the Christmas Holiday. This was the first time that any information concerning the environmental or socio-economic impacts from the range of alternatives was provided to cooperators. Unfortunately, the BLM administrative draft was largely incomplete, inconsistent, and had several sections that were simply incorrect. Specifically, it lacked impact analysis for an entire alternative, it presented erroneous acreage figures and tables for Wyoming, and was woefully inaccurate in its description of socioeconomic impacts from fluid mineral leasing and development.

The BLM acknowledged these errors and promised Wyoming cooperating counties a second review of an updated draft of the socioeconomic sections before the release of the public draft. The BLM failed to uphold this promise and cooperators were never shown updated socioeconomic information before the draft went public.

IV. Consistency with Converse County Natural Resource Management Plans

The Federal Land Policy and Management Act (FLPMA), which governs the BLM, provides detailed requirements for "coordination" and "consistency" with local government land use plans. FLPMA states:

> To the extent practical, the BLM must stay apprised of local land use plans. The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration. To the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans. The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. 43 U.S.C. § 1712(c)(9).

There is no indication in the DEIS that BLM was apprised of local land use plans or assured that those plans were given consideration as required by FLMPA. Nowhere in the DRMPA does the BLM even quantify the local plans within the amendment area, not to mention, assure those plans are given consideration. At a minimum, the BLM should include a list of the local land use plans that are within the amendment boundary. For further assistance, Converse County has attached its Converse County Natural Resource Management Plan, dated July 5, 2022, in its entirety for your consideration. Converse County has also included Resolution 07-22 approving the adoption of the County Plan.[2]

FLPMA also requires that within the environmental consequences section of an EIS, the BLM include a discussion of all "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(a)(5). Further, where any inconsistency exists, the BLM is required to provide a statement describing "the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d). An RMP may be inconsistent with local plans only where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and regulations applicable to public lands. *Id.*; 43 C.F.R. § 1610.3-2(a).

There is no discussion of possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. Not only does this discussion concern local land use plans, but the BLM must also discuss the conflicts with its own mandates and laws. Specifically, it should discuss the obvious conflicts present in Alternative 3 with its multiple use and sustained yield mandate.

The BLM seems to suggest it does not need to do additional consistency review when it states on page ES-12: "Some counties identified their preference for management actions from one alternative or another. It is important to note that these preferences did not specifically cite state or county plan, program, or policy language."

This statement is false and should be removed from the DRMPA. Counties and the State of Wyoming both provided verbal and written comments and identified preferences of management actions based on the State's EO and county plans, programs, and policies. To the extent that additional citation or specificity was desired, the BLM should have asked for it and provided an opportunity for cooperators to provide it.

The DEIS rightfully acknowledges on page 1-12 that "BLM RMPs be consistent with officially approved or adopted resource-related plans of other Federal, State, local, and Tribal governments and policies and

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[2] Resolution 07-22 Converse County, Wyoming Resolution Adopting the 2022 Converse County Natural Resource Plan 07-22 Adopting Converse County Natural Resource Plan 7.6.2022.pdf

programs contained therein, to the extent that they are consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands." However, the DEIS does not address inconsistencies with local plans but instead, claims that the BLM will identify inconsistencies in the Final EIS after receiving comments from state and local government agencies.

Converse County believes that the BLM's approach of waiting until the final stage to address inconsistencies in the EIS is flawed. This delay prevents state and local government agencies from providing input during the drafting phase, which could have led to substantive comments that might alter the project's components and subsequent analyses. A federal agency should not address consistency solely by responding to concerns raised through comments. Instead, the BLM should have taken an active approach in identifying inconsistencies and addressing them in the DEIS. It is clear that the process by which BLM included a thorough consistency review of the Converse County local natural resource plan fell far short of adequate and examples of specific inconsistencies will be detailed in this letter below.

IV. Disturbance Caps

The County recognizes the importance and necessity of establishing appropriate disturbance caps to ensure that disturbance to an area does not exceed tolerance levels of the GrSG. The Wyoming State Legislature, federal, state and local agencies, industries, conservation organizations, and landowners have dedicated significant time and resources to conserve GrSG populations in the State. We have shown the capacity and authority to protect and manage the species and its habitats on all lands by establishing oversight mechanisms and implementing protection measures, including developing a disturbance cap using the Density Disturbance Calculation Tool (DDCT). The DDCT establishes a disturbance cap of 5% for suitable GrSG habitat per an average of 640 acres over the entire DDCT assessment area.

To align with the State's EO for GrSG management strategies and to facilitate prompt calculations of disturbance areas, the County suggests that Wyoming be exempt from the 3% HAF fine scale disturbance cap, regardless of the chosen alternative under the EIS. While the BLM would still be able to gather and quantify whatever disturbance data it chooses, the 3% HAF fine scale disturbance cap should not be another disturbance calculator for permit authorization.

Currently, the disturbance levels in Wyoming, including those from fire and agriculture, are well below the 3% cap, making the requirement to meet this cap largely redundant and an inefficient use of time. Moreover, since the 3% HAF fine scale disturbance cap overlooks disturbances from fire and agriculture, which the DDCT includes, utilizing the DDCT for calculating the disturbance cap offers a more inclusive and simpler approach.

As stated earlier, the County supports the Wyoming EO including the utilization of the 5% surface disturbance cap along with the DDCT process, which has proven to be a sufficient management tool of surface disturbing activity within PHMA (core) habitat.

Additionally, the introduction of two disturbance caps could eventually lead to scenarios where one cap is met but the other is exceeded. The DEIS lacks clarity on how the BLM would manage such situations, potentially opening the door to disputes and outside legal challenges. Converse County is concerned that any perceived discrepancy between the two disturbance calculations could fuel litigation from parties with the intent on halting the permit process. Clarity is key.

If the BLM proceeds with dual disturbance caps, the County would expect the agency to honor its verbal commitment made at the SGIT public meeting on May 29th, 2024, to engage with the State of Wyoming when discrepancies between disturbance caps arise.

Ultimately, by adhering to the established DDCT 5% disturbance cap, the BLM would not only effectively safeguard the habitat of the GrSG from excessive disturbance but also circumvent unnecessary project delays that could stem from additional coordination and potential litigation.

V. Grazing Management Objectives

Agriculture and livestock production in the County is necessary for the economy, its tax base, and the livelihood of the ranching/farming businesses and related industries. It is also vital to the well-being and continued health of natural resources on federal, state, and private lands. The range production of livestock and livestock grazing are management tools that are used to maintain and enhance the rangeland resource, which benefits watersheds, wildlife, water quality, and recreation, as well as providing needed forage for sustaining livestock production and wildlife habitat. Livestock grazing has been a major industry in Converse County since early settlement and continues to be a vital part of the custom and culture of the County as well as an economic driver.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 159-160 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

8.2.3 Livestock Grazing Resource Management Objectives:

A. Livestock grazing is maintained as a viable major component of the economy, custom, and culture of Converse County.

B. Converse County is consulted early in the scoping process whenever a proposed decision will impact grazing, local agriculture producers, and/or the economy.

C. Federal decisions affecting grazing use best available scientific information and localized baseline and monitoring data are given heavier weight than regional, state, or national data.

8.2.4 Livestock Grazing Priority Statements:

1. Federal agencies should support range livestock production that is environmentally and economically viable.
2. Livestock grazing management decisions shall be made based on the best available scientific information that is applicable to the rangeland resources in Converse County.
3. Animal unit months (AUMs) on federal lands shall not be reduced unless a documented resource condition indicates a need for temporary reduction to improve condition. Any reduction shall include a plan to reinstate AUMs when the resource condition has been addressed.
4. Converse County opposes the conversion of livestock animal unit months (AUMs) to wildlife AUMs.

In addition, Converse County encourages BLM to be consistent with the BLM Land Health Standards LHS) and specifically Standard 4 which addresses special status species management (SSS). Furthermore, the management prescriptions pertaining to livestock grazing identified in Chapter 2 (page 2-104, Table 2-12) of the DEIS should be made consistent in Chapter 4 and throughout the entirety of the document.

Specific to Adaptive Management (AM) and grazing in Alternatives 3-6, BLM has removed livestock grazing from the narrative and embedded it in the alternatives table in Chapter 2. The language in the alternatives table for AM is not consistent with current BLM rules and regulations, nor is it consistent with the Alternatives for Livestock Grazing in Chapter 2.

BLM should allow for grazing to be included in the AM process and be consistent with existing alternative language. BLM uses the terms "causal" and "contributing factors" incorrectly. Livestock grazing must be identified as a significant causal factor for LHS SSS before any modifications occur to a livestock grazing permits or leases. The County requests that the following language be considered in the alternatives: Specific to GrSG habitat, manage livestock grazing in a manner that 1) meets or makes progress toward meeting the Land Health Standard for special status species, and applies the guideline that addresses "restoring, maintaining, or enhancing habitats of...special status species to promote their conservation." (43 CFR Part 4180.2(e)(9))

Moreover, under Alternative 3, BLM analyzed for a "no grazing" alternative for all states stating "...Because PHMA would be unavailable for livestock grazing, no overarching livestock grazing objective would be needed." This alternative is economically and technically unfeasible to implement as it is in violation of the Taylor Grazing Act. The most appropriate action, as identified by the CEQ NEPA Regulations, would have been for BLM to consider it and eliminate it from further analysis as it does not meet the standard of alternatives that should be analyzed as "technically or economically" feasible. The County is strongly opposed to a "no grazing alternative" in any form.
Regarding fencing, the County generally supports wildlife friendly fencing; however, BLM must coordinate with the applicable grazing lessees should the removal of fencing be considered as those decisions could impact grazing allotments and management of the resource. Finally, any changes in grazing management should consider effects to the adjoining private or state lands as this could impact grazing management practices.

As demonstrated, agriculture production and livestock grazing are significant for the Counties. Not only do they provide an important tax base, the industry is a historical part of the local custom and culture. In the preferred alternative, the County supports the maximum amount of animal unit months (AUMs) being available for livestock grazing on BLM lands in PHMA and GHMA.

VI. Mitigation

Wyoming remains committed to working with its federal partners to develop a mitigation strategy that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. While BLM must adhere to its mitigation hierarchy (avoid, minimize, rectify, reduce, compensate), the County encourages the federal agency to work with the State of Wyoming by following the well-founded principles in the EO regarding adaptive management and the mitigation framework which includes steps for requiring compensatory mitigation. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting

the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner and provides regulatory certainty for all parties involved.

VII. Private Property Rights

As stated earlier, Converse County is rich in federal resources as our lands are comprised of approximately 14% *federal surface* and an estimated 60% *federal minerals*. Farming, ranching, energy development, tourism and recreation contribute heavily to the heritage of the County. Rangeland used by livestock and agricultural producers continues to be the dominant land use and federal agencies should consider the effects their decisions will have on neighboring private lands.

Furthermore, access to, or restrictions from, crossing federal, state, or county managed lands should not entail encumbrances or constraints on private property. Private property rights are the cornerstone of our County and must be protected to ensure that our continued customs and culture remain intact. When an agency decision or proposed action will have a negative impact to the current use of neighboring private lands, that federal undertaking may not be supported by the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 33, 39-40 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

3.1.7 Land Use Priority Statements:

1. Federal agencies should support decisions that ensure the socioeconomic wellbeing of Converse County citizens, maintain the culture and customs of the constituents, and consider natural resource health.
2. Federal agencies should consider the affects their decisions will make to neighboring private and state lands within Converse County.
3. When an agency decision or proposed alternative will have a negative impact to the current use of neighboring lands, that proposed decision or alternative may not be supported by Converse County.
4. Ensure there is no net loss of private lands in Converse County. Net loss shall be measured in acreage and fair market value.

3.2.3 Transportation and Land Access Resource Management Objectives:

A. Private property rights are protected in Converse County while facilitating rights of access.

3.2.4 Transportation and Land Access Priority Statements:

1. Access to and/or across federal, state, or county managed lands within Converse County should not entail encumbrances or restrictions on private property.

Converse County is particularly concerned about the failure of the DRMPA from analyzing the effects on neighboring state and private lands in the analysis area. Whether described as adjacency effects or cumulative effects, in a state where the BLM manages approximately 18 million surface acres and 41 million subsurface acers (66% of the state), there are substantial impacts to private and state lands across the decision area.

Management and ownership patterns lack uniformity creating a complex and interwoven mix of state, private, and federal minerals that are often "coproduced." The scale of coproduction can vary in degree and can be described in several ways. First, oil and gas can be coproduced by an individual wellbore that crosses through and produces the varying mineral estates. Second, oil and gas can be coproduced inside a drilling and spacing unit, where specific production is pro-rated to the percent of ownership in the drilling area. Finally, oil and gas can be coproduced across the entirety of a company's development play.

Oil and gas companies, like any other enterprise, must take into account risk/reward, scalability for cost saving, future development potential, infrastructure needs, and regulatory regimes. Operators prioritize areas for development where they can maximize returns and reduce risks. In the current phase of development in Wyoming's Powder River Basin, operators have large swaths of development to minimize risks, provide operational flexibility, and cost share infrastructure.

Even where a wellbore doesn't penetrate federal minerals in a particular drilling and spacing unit, gathering lines, pipelines, transmission lines, and roads to get product to the market inevitably run into federal management at some juncture. Therefore, ROW and surface occupancy restrictions have significant implications for private and state lands and minerals.

This analysis needs to be included in DRMPA. The BLM should acknowledge and analyze the cumulative effects of restrictions on the socioeconomics of our communities. The BLM's socioeconomic analysis should describe the human interests and values shaping public lands management, identifying effects of proposed actions on communities and economies, and promote the economic and social sustainability of communities near public lands.

VIII. Adaptive Management

Wyoming has worked diligently with its federal partners (BLM and USFWS) to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner.

Under Wyoming Statute § 23-1-103, "...all wildlife in Wyoming is the property of the state..." and the Wyoming Game and Fish Department (WGFD) has the legal responsibility for carrying out the purposes of this act. Using the best available science in the Adaptive Management process is necessary to continue long-term healthy populations of GrSG. Recognizing the WGFDs expertise, the State's Adaptive Management strategy places the responsibility of conducting annual population data squarely with the state agency. It is imperative that BLM recognize the WGFDs authority and expertise in this process.

The County implores BLM to defer to the WGFD regarding any data collection or management decisions that pertain to the population trend analysis of GrSG within the boundaries of Wyoming.

IX. Wild Horses

In 1971, Congress enacted the Wild Free-Roaming Horse and Burro Act (Public Law 92-195), which guides the management, protection and control of wild horses and burros on federal lands managed by the USFS and BLM. Herd Management Areas (HMAs) were established in ten Western states based on the existing populations during the passing of the Act in 1971. This Act also mandates that wild/feral horses and burros are managed in a thriving ecological balance with the land and as part of the natural landscape (USFS 2021b). To ensure wild/feral horse and burro populations remain in good condition and that federal lands are protected from degradation, the growth of wild/feral horse and burro herds must be actively managed.

Population control is necessary to protect fragile ecosystems, balance shared use of resources by wildlife, and maintain herd health and protect herds from starvation. Converse County encourages aggressive wild horse and burro management that will not adversely impact rangeland resources, livestock or grazing, wildlife habitat or resources, soil resources, or other varied land uses.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 140 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

6.6.3 Wild Horse and Estray Livestock Resource Management Objectives:

A. No Herd Management Areas or Herd Areas will be designated or created in Converse County without coordination.

6.6.4 Wild Horses and Estray Livestock Priority Statements:

1. Converse County opposes any proposed creation, enlargement, or expansion of the current herd management area (HMA) or herd area (HA) boundaries and the designation of any additional new HMAs or HAs within the County.
2. Federal agencies should notify and coordinate with Converse County if there are any intentions to designate or create Herd Management Areas or Herd Areas within the County.

The only viable alternative analyzed that appropriately addresses actual management of wild horse and burros is Alternative 3 (page 2-114, Table 2-13). Managing for "zero" Appropriate Management Levels (AMLs) within HMAs that overlap with PHMA and removing wild horses in those areas is the proper land management prescription and is the only realistic method for meeting AML at the implementation level. For the benefit of the GrSG, all available agency tools must be used to support herd management plans that prevent habitat degradation and native wildlife displacement, including the removal of all wild horses and burros from PHMA.

The State of Wyoming submitted alternative language for wild horses that based any removal of HMAs on whether wild horses were the causal factor of range degradation for a certain period of years. While substantial evidence already exists, that wild horses cause significant range damage and negatively impact GrSG, Wyoming's recommended approach would have been more economically, politically, and scientifically defensible. Unfortunately, this alternative was not properly considered in any of the other alternatives.

X. Lack of Need for ACECs

The WCCA conducted a consistency review on a statewide basis of the DEIS alternatives in relation to ACECs and county natural resource plans, which is summarized in the attached table. In addition to the consistency table, the text below details the concerns regarding the BLM's inadequate and untimely consistency review and the unnecessary designation of ACECs in areas with existing and adequate PHMA designations to manage for and protect GrSG.

An ACEC is defined as "areas within the public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a).

A potential ACEC must satisfy a three-part test before it may be designated. First, it must have "relevance," meaning it possesses "a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard." 43 C.F.R. § 1610.7-2(a)(l). Second, it must also have "importance," meaning the relevant values identified in the first step must have "substantial significance and values." 43 C.F.R. § 1610.7-2(a)(2); see also BLM Manual 1613, Section 1 l.B. For the relevance values to meet the "importance" threshold, the area must have "more than locally significant qualities ... compared to any similar resource," have qualities that make it fragile, rare, or irreplaceable, or been recognized as warranting protection to satisfy national priority concerns. BLM Manual 1613, Section 11.B.1. Third, the nominated area must require "special management" "to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish, wildlife, and plant resources, or other natural system or processes." 43 U.S.C. § 1702(a).

Certainly, ACECs can play a role in conservation and special management of historic, cultural, scenic, fish and wildlife resources. However, the BLM has not demonstrated how the addition of the proposed ACECs under Alternative 3 of the DEIS will improve Greater Sage-grouse populations and habitat more effectively than Priority Habitat Management Areas (PHMAs). Under Alternative 3, the DEIS states that the ACECs would be managed similarly to PHMAs, without additional management prescriptions. Converse County strongly feels that the designation of ACECs under Alternative 3 are unnecessary given that they will be managed exactly the same as PHMAs. The BLM fails to consider how GrSG populations and habitat are already protected under existing management actions and will be further protected by the proposed management actions under Alternatives 3 of the DEIS. A significant example of this failure is the BLM's attempt to layer ACEC designations on top of existing ACECs like in Fremont and Sublette Counties.

Furthermore, ACEC designations could allow for excessive regulatory authority in the future for areas that are otherwise considered appropriate for PHMA management. Unnecessary designation opens the door for further impediments to multiple use practices.

Attached to this letter, you will find a spreadsheet that provides a thorough review of inconsistencies between the above-mentioned Wyoming County NRMPs and the proposed ACEC resource management restrictions under Alternatives 3 and 6 of the DEIS.

In addition, the County has identified several inconsistencies between the DEIS and the Converse County Natural Resource Management Plans (NRMP) directly affected by the proposed ACECs. For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 44-45 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

3.3.3 Special Designation and Management Area Resource Management Objectives:

A. Designation and management of special designation or management lands are coordinated with Converse County and adjacent landowners.

B. No new special designation or management areas are created in Converse County without specific approval from the County and adjacent or affected landowners.

3.3.4 Special Designation Area Priority Statements:

1. Any proposed special management area designation shall undergo analysis of the impact to Converse County's custom, culture, and economy.
2. If any special designation or management areas are created, federal management of special designation areas shall be coordinated with Converse County and consistent to the maximum extent possible with the Converse County Natural Resource Management Plan.
3. Converse County does not support future designations of new special management or designation areas in the County, including, Wild and Scenic Rivers, Wilderness, or Wilderness Study Areas, lands with wilderness characteristics, Areas of Critical Environmental Concern, Roadless Areas. Any proposed designation shall be coordinated with the County and undergo analysis of the impact to Converse County's economy including a pre-existing condition analysis.
4. Converse County should be consulted on any buffer zones implemented for the protection of special designation and management areas.

Converse County strongly opposes the designation of any Sage-grouse ACECs in Wyoming. As discussed earlier in these comments, we have worked diligently as a state to develop a framework that effectively manages for GrSG populations and its habitat and no new ACEC designations are warranted nor will they provide any additional protections not already in place.

XI. Fluid Mineral Development and Leasing Objective

Likely the most substantial direct impact to local government revenue in Wyoming is the management prescription for oil and gas development. Consequently, it is vital to correctly capture existing development and the Reasonably Foreseeable Development Scenario (RFDs). The RFD is even more important to get correct when it is comparing the potential impacts from wildly inconsistent alternatives. If poor or incorrect data is utilized to develop the RFD, then the RFD and resulting socioeconomic analysis will be flawed.

Certain portions of the BLM's description and analysis of existing oil and gas could be improved. For example, on 12-38 the BLM reports 9,127 wells have been "drilled" in Wyoming between 2013 and 2023. However, this figure includes workovers and wells that were never completed, which may capture wells that were never actually "drilled." The section properly includes data from the Wyoming Oil and Gas Conservation Commission, which reflects a total of 6,455 unique well spuds in Wyoming between 2013 and 2023. However, the fact that the state's number is 30% less than the BLM's number reflects a poor attempt to gather and clean-up the data for analysis.

On page 12-39, the DRMPA states that 24% of the HMAs in Wyoming are under an existing authorized lease. Additional data that should have been reflected in the DRMPA and clarified in this section is the number of leased acreage currently under litigation in Wyoming. Without including litigated leases in Table 35, it is misleading to members of the public that equate "authorized" as available for development.

In order to understand whether the RFD is truly reasonable there should be a greater description of what was utilized for inputs and variables. Table 35 in Appendix 12 would benefit from a better description of the "source" of the data provided in the table. In addition, there needs to be additional description of the table to help clarify whether these projected wells are federal surface and minerals, private/state surface and federal minerals, or mixed minerals and surface, etc.

The "Projected Production by Alternative in the Decision Area" needs to be amended to more accurately reflect the decline curves associated with modern horizontal development in Wyoming. Without any written description or justification, the projection utilizes a record production year in Wyoming as its basis for production over the next 20 years. In other words, the current projections do not consider decline curves of existing and new wells but keep historic production levels constant. However, it must be noted that the only way to maintain that statewide production level as production declines from existing wells is to drill and produce new wells.

The problem with maintaining existing production as a constant in the RFD is that it artificially reduces the negative economic impacts associated with alternatives 3 and 4 reduced projected well development. This is because the weight given to new wells is significantly reduced by the artificial base production of the existing wells.

Under Alternative 3 only 4,284 wells are expected to be drilled in the next 20 years. This is compared to Alternative 1 that projects 14,450 wells drilled in the same period of time. Although alternative 3 projects

over 10,000 less wells are drilled in 20 years it only reduces the production of oil by roughly 224,000,000 barrels and gas by 4,600,000,000 mcf of gas.

Taxes derived from oil and gas development in Wyoming constitutes a significant portion of state and county revenue used to pay for public education and essential services, including roads, fire protection, emergency medical services, courthouses, libraries, landfills, hospitals, law enforcement, airports, recreation, and senior citizen centers. To further illustrate its importance, the assessed valuation in Converse County alone for oil and gas in Fiscal Year 2022 was approximately $2.1 billion

Oil and gas companies operating in Wyoming are assessed property (ad valorem) taxes by counties and severance taxes by the state. Although they are called "taxes" both are more akin to a royalty because production is taxed regardless of whether an operator makes a profit. Property taxes on oil and gas vary by county and range from 6-7.3% calculated by the gross revenue of the previous year's production and the value of tangible equipment and improvements. Severance taxes are calculated at 6% of gross revenue in the same manner as royalty taxes (gross revenue minus transportation and gas processing cost). Federal Royalties are also deducted from the gross revenue for the purpose of calculating severance taxes.

Property taxes on oil and gas account for over 40% of the total property taxes levied by counties in Wyoming. In 2020, the property taxes collected by counties exceeded $600 million. Additionally, severance taxes collected by the state in 2022 topped $275 million. When adding in federal lease revenues, federal and state royalties, sale and use taxes, and conservation taxes, the industry contributed $1.23 billion in taxes to state and local governments.

According to the Wyoming Department of Revenue, 40% of Converse County's sales tax directly comes from the mineral industry. This does not count the secondary sales tax paid by those companies when they purchase goods from local businesses, making the impact well over 50%. Currently that accounts for over $1,000,000 a month in revenue to the County.

Furthermore, ad Valorum taxes associated with oil and gas production generated an average of over $25,000,000 a year for Converse County the last 4 years. This represents over 74% of all property tax paid in the County. A decrease in assessed valuation will affect all County operations including essential services like road and bridge construction and maintenance, investment in IT technology and cyber security, economic diversification investment (water, sewer, and streets), fire equipment and personal, and daily operations.

As noted on the Petroleum Association of Wyoming (PAW) website, Wyoming ranked 8th in production of both crude oil and natural gas in 2022 nationally. Further, Wyoming ranked the 2nd largest producer of both oil and natural gas on federal lands, making the state disproportionally affected by national policy changes. According to a 2023 study released by the American Petroleum Institute, in 2021 the oil and natural gas had the following impacts on the Wyoming economy: 58,780 total jobs and $5.7 Billion in labor income.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 81-82 of the County

Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

4.4.1.3 Oil and Gas Resource Management Objective:

A. Oil and gas extraction are managed in a responsible way that promotes Converse County's economic viability along with the health of the citizens of the County.

4.4.1.4 Oil and Gas Priority Statements:

1. Converse County encourages and supports the nomination of more federal and state oil and gas leases for sale.
2. Converse County encourages proper mitigation and reclamation practices throughout the County using existing ecological site descriptions to help determine mitigation and reclamation methods in coordination with Converse County Conservation District and the Converse County Weed and Pest Control District.
3. The BLM should continue holding lease sales and awarding leases for Converse County lands on at least a quarterly basis as is required by the Mineral Leasing Act.

Funding derived from mineral development constitutes a significant portion of State and County revenue used to pay for essential services, including roads, fire protection, courthouses and judicial systems, libraries, landfills, hospitals, law enforcement, airports, recreation, public health, and senior citizen centers. Any curtailment of leasing and development activity significantly impacts the socio-economics of the communities and eliminates a critical funding stream for not just our County but all counties, the State of Wyoming and its residents.

Our ability to fund organizations would be negatively affected, which includes but is not limited to, the following: WY Child and Family Development, Children's Advocacy Project (forensic interviewing of sexually assaulted and abused children), Human Resource Council, 'Youth Development Services (Youth Crisis and Intervention Center)', Humane Society, Boys and Girls Clubs, County Fair Boards, Hope Center (Domestic Violence and Sexual Assault Survivors Crisis Center and Shelter), local Libraries, Behavioral and Mental Health Crisis and Intervention Centers, Economic Development organizations and various youth and community recreation organizations. Without County support these organizations will offer fewer public services and could fail and there would be insufficient funds to provide basic services at a level needed for the protection of the county resident's health, safety, and security.

It cannot be stated enough the importance that the oil and gas industry plays in Wyoming. BLM must do all it can to find a balance between GrSG species and habitat protection with continued mineral leasing and development. This balance must be made in consideration of the interwoven land ownership patterns across Wyoming.

XII. Transportation and Transmission Objectives

Public access to routes of travel is essential to the County's transportation and public access systems and to the economic, social, political well-being, customs and culture of the communities. Many private landowners need rights-of-way across state and federal lands to access their property, to use their water rights, and to exercise their grazing rights. Rights-of-ways (ROW) and corridors provide for the

development of certain types of infrastructure or facilities that are in the public interest on federal lands for a specified period of time.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 39-40 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

3.2.3 Transportation and Land Access Resource Management Objectives:

A. There is full and open access to and across Converse County federal lands for local purposes such as safety, health, economic use, and recreation.

B. Access to public lands within Converse County is maintained and expanded where possible.

C. Private property rights are protected in Converse County while facilitating rights of access.

3.2.4 Transportation and Land Access Priority Statements:

1. Converse County requests that any planning process or activity that restricts, eliminates, or increases access to federal or state lands first notify and allow the County to initiate coordination and cooperating agency status to resolve any potential conflicts with the County's objectives, principles, and policies, prior to taking action.
2. Converse County supports legal public access to the federal lands for all beneficial uses as long as it does not infringe on private property rights.
3. Access to and/or across federal, state, or county managed lands within Converse County should not entail encumbrances or restrictions on private property.

Regarding approved access for transportation or transmission within PHMA, the County will support the Wyoming EO and the surface disturbance DDCT process for determining access. However, we strongly encourage BLM and the state to coordinate and consult with the affected County regarding any planning process or activity that restricts, eliminates, increases, or decreases access to federal or state lands and allow the County the opportunity to resolve any potential conflicts with the County's objectives, principles, and policies, prior to acting.

XIII. Socioeconomics

Economic impacts do matter. Access to federally administered lands and resources are critical to ensure the socioeconomic well-being, custom, culture and stability of our communities. In Converse County, lands under federal or state control and decisions made for public land management can directly impact the service and non-service industries, public accessibility, and the demographics of an area. Effective coordination and consultation between the County, federal and state agencies is critical to ensuring that land management agencies thoroughly consider the effects that proposed actions have on custom, culture, and economic stability; conservation and use of the environment and natural resources in the County along with multiple use. Counties receive revenue from federal lands in many ways including mineral leasing and development, agriculture, recreation, travel and tourism, etc. Any curtailment of access to public lands will directly impact the socioeconomics of the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 149-150 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

7.3.3 Economic and Socioeconomic Resource Management Objectives:

A. The socioeconomic and economic viability of Converse County is prioritized, protected, and enhanced in all federal actions or decisions.

7.3.4 Economic and Socioeconomic Priority Statements:

1. Converse County requires consultation and coordination from federal agencies at the earliest time possible for any proposed action, change of existing activities, newly permitted activities, or changes in regulations that may affect the economic basis of the County.
2. Federal agencies should support continued access to natural resources development/use on federal lands to maintain economically viable communities in Converse County.
3. Converse County supports "no net loss" in the County economic base due to federal agency decisions.
4. Federal agencies should include Converse County in all discussions regarding mitigation, if necessary, to protect the economic base of the County.
5. Federal agencies should support the analysis of social and economic factors at the lowest possible level, such as on a County-wide basis, in addition to consideration on a state-wide or national scale.
6. Federal agencies should promote the economic and socioeconomic growth of Converse County and engage in consultation and coordination between federal agencies and the County regarding any issues and activities on public land that affect or influence the County's economic and socioeconomic viability.
7. Converse County supports the achievement of a sustainable balance between economic, recreational, and conservation use of lands for economic growth and quality of life.
8. A full analysis shall be required by the federal agencies on the impact each proposed decision or federal action will have on the local Converse County economy.

The County cannot state clearly enough the importance of our ability to access federal lands to drive vibrant economic communities. BLM significantly undervalued the mineral contributions to the counties and state in the socioeconomic section. BLM must include a robust socioeconomic analysis clearly demonstrating the differences between management prescriptions in the Alternatives, which includes impacts to the tax base (royalties, rents or bonus bids, severance taxes, ad valorum taxes, sales and use tax employment income, and direct and indirect employment.) The County can assist in providing the most up-to-date information available for BLMs analysis.

In conclusion, Converse County is committed to continuing our engagement as a cooperating agency along with the State of Wyoming, its state agencies and BLM to work through these important issues. We

encourage BLM to align with the most recent Wyoming EO, include acknowledgement and analysis of the Wyoming State Alternative and to develop a preferred alternative that takes into consideration our comments submitted herein.

Should you have questions or require additional information, do not hesitate to contact me via email at (jim.willox@conversecountywy.gov) or our natural resource policy advisor Dru Palmer at 307-388-2709 or via email at (dru@wyoming.com).

Sincerely,

Jim Willox, Chairman
Board of Converse County Commissioners

CC: The Honorable Governor Mark Gordon
The Honorable United States Senator John Barrasso
The Honorable United States Senator Cynthia Lummis
The Honorable United States Congressman Harriet Hageman

MARYLAND ORNITHOLOGICAL SOCIETY

June 09, 2024

RE: **DOI-BLM-WO-2300-2022-0001-RMP-EIS**

Dear Bureau of Land Management:

The Maryland Ornithological Society (MOS) appreciates the opportunity to comment the BLM's Greater Sage-Grouse Draft Resources Management Plan Amendment and Environmental Impact Statement. MOS is very concerned about the continued decline of the Greater Sage-Grouse (GRSG), with GRSG numbers falling 80% since 1965, with half of the decline since 2002. Our members have travelled to western states to see this iconic species.

MOS supports Alternative 3 as the one most likely to halt the continued population decline of the GRSG. As the plan itself states, this alternative is science-based, taking in all the new information and science that has become available since 2019.

This alternative would manage all habitat management areas as Priority Habitat Management Areas (PHMA), which would be closed to new fluid mineral leasing, as well as nonenergy mineral leasing. PHMA would be recommended for withdrawal from entry under the Mining Law of 1872. Livestock grazing would not be available. Any wild horse and burro herd management areas that fall within PHMAs would be no longer managed for the wild horses and burros. Over 11 million acres would be declared Areas of Critical Conservation Concern specifically managed for GRSG. We have concerns that the ACECs do not include all PHMA. We would like to see all PHMA as ACEC.

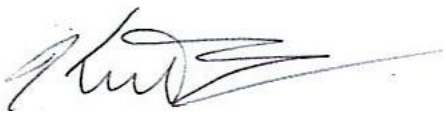
Vital areas that we would like to see designated as PHMA/ACEC are the Golden Triangle of Wyoming, North Park in Colorado, portions of Owyhee-Jarbridge on the Nevada/Idaho border, High Divide areas on the Idaho/Montana border, South Valley Phillips/Hi-Line in Montana, Rich Count/Bear River Valley in Utah, and northeastern California areas.

Please continue to consult with the states and Native Tribes on this issue.

MOS is an all-volunteer organization dedicated to study, enjoyment, and conservation of birds and their habitat. We were established in 1945, and now stand at 2000 members drawn from all walks of life.

In conclusion, MOS supports Alternative 3, with the modifications detailed above.

Sincerely,



Kurt R. Schwarz
Conservation Chair Emeritus
Maryland Ornithological Society
Krschwa1@verizon.net
443-538-2370

Greater Sage-Grouse, Yuma County, Colorado, April 18, 2017, photo by Kurt Schwarz

NIOBRARA COUNTY COMMISSIONERS

Patrick Wade, Chairman | John Midkiff, Vice-Chair | Elaine Griffith, Commissioner

June 13, 2024

Greater Sage-grouse Land Use Plan Amendments EIS Comments
ATTN: HQ GRSG RMPA
U.S. Bureau of Land Management - Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101

Attention: Ms. Pat Deibert

Submitted via Federal eRulemaking Portal
Portal: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning **(**Federal Register/Vol.89, No. 52/Friday, March 15, 2024/Notices)

Dear Ms. Deibert:

On behalf of the Niobrara County Board of Commissioners (County), please accept this letter as comments for the Bureau of Land Management's (BLM) Greater Sage-grouse (GrSG) Draft Resource Management Plan Amendment (DRMPA) and Draft Environmental Impact Statement (DEIS). The management of GrSG continues to be of great importance to us and working with federal agencies to pursue a balance between Sage-grouse conservation, multiple use of public lands, energy development and the protection of private property is critical to the long-term health of our County and the State of Wyoming.

As a member of the Wyoming County Commissioners Association (WCCA), Niobrara County has been actively engaged in the GrSG RMPA process, today and historically during the 2015 and 2019 plan amendments. In addition, we have participated in the Governor's Executive Order process including the development of Wyoming Executive Order 2015-4 and 2017-2, and most recently the updated Executive Order 2019-3. The County has demonstrated through numerous efforts that we have a vested interest in proactive management of GrSG to prevent a threatened or endangered listing under the Endangered Species Act (ESA).

424 S. Elm St.
PO Box 420
Lusk, WY 82225

A PUBLIC OFFICE IS A PUBLIC TRUST

PHONE (307) 334-2211
FAX (307) 334-3013

In Wyoming, counties serve as a legal arm of the state entrusted with carrying out statutory and regulatory goals at the local level. Counties operate at the forefront to ensure our communities are economically vibrant, safe, and healthy places to live and work. Wyoming counties serve as partners and co-regulators of the 18.4 million acres of BLM surface lands and 42.9 million acres of federal mineral estate that fall within our jurisdictional boundaries and uniquely contain varying percentages of federal, state, and private land, which need thoughtful management. Specifically, Niobrara County lands are comprised of approximately 8% of *federal surface* and an estimated 45% of *federal mineral estate.*

Furthermore, as co-regulators, Niobrara County and the Niobrara County Conservation District adopted the Niobrara County Natural Resource Management Plan dated August 3, 2021 to serve as the basis for communicating and coordinating with the federal government and its agencies on land and natural resource management issues. Wyo. Stat. § 18-5-208(b). Communication, coordination, and collaboration with the BLM is vital, especially where significant BLM land and minerals exists, and management decisions can significantly impact the regulatory framework, customs, culture, and socioeconomics of our counties.

As partners, Counties work diligently to support the work of our federal land managers to overcome shared challenges and achieve mutual goals. Our counties actively participate with Wyoming BLM field offices and the Wyoming State BLM office on National Environmental Policy Act (NEPA) projects, trainings and presentations, and special initiatives. This proposed Plan Amendment is no exception, as Wyoming counties participated as cooperating agencies in BLM meetings and provided administrative draft comments, where allowed.

In response to this DEIS, Niobrara County submits the following detailed comments for BLM's consideration specific to this plan amendment:

I. General

- State of Wyoming –Niobrara County endorses, and incorporates by reference, comments submitted by the State of Wyoming.

- Wyoming County Commissioners Association (WCCA) –Niobrara County endorses, and incorporates by reference, comments submitted by WCCA.

II. Support for the Wyoming GrSG Executive Order 2019-3 (EO) and State Alternative

Niobrara County has gone on record numerous times, strongly supporting BLM's alignment with the Wyoming EO to the greatest extent possible. Niobrara County believes the steps taken by the BLM in the past to align with the EO are critical to successful population and habitat management. Further, coordinating and combining resources between the state, local governments and federal agencies ensures the success of long-term management approaches that benefit the species.
The creation of the Sage-grouse Implementation Team (SGIT) is an on-going process occurring between a cross section of stakeholders representing a multi-jurisdictional, cross-governmental and citizen-inclusive collaborative working group, focused on developing a satisfactory management

strategy to protect GrSG and its habitat. The regulatory framework ultimately developed by SGIT and incorporated into the Wyoming EO resulted in the support of the United States Fish and Wildlife Service (USFWS) as a regulatory mechanism that would in fact protect long-term viability of Sage-grouse habitat and Sage-grouse populations; thereby, avoiding a listing under the ESA.

Wyoming has worked diligently to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. Many of the issues BLM is now readdressing in this latest series of NEPA analysis includes: Priority Habitat Management Area (PHMA) mapping, habitat objectives, approaches to minimizing surface disturbance in PHMA, effects of livestock grazing, mitigation strategies including compensatory mitigation, mitigation recommendations for fluid mineral development within PHMA and General Habitat Management Area (GHMA), wild horse and burro management, adaptive management prescriptions and strategies for short-and-long term monitoring, which are all addressed in depth by the Wyoming EO.

BLM should continue to join Wyoming in supporting this EO and the regulatory framework as being the most effective for protecting the species and its habitat and allowing for a flexible strategy addressing changing conditions in a timely manner.

To this point, the State of Wyoming submitted a proposed State Alternative to be analyzed in this DEIS, which provided consistency with the EO. BLM failed to incorporate that proposed state alternative in the analysis as stating it was submitted to BLM too late in the process to be included as a stand-alone alternative. The County strongly encourages BLM to include or acknowledge the State's Alternative in the Final EIS with a sufficient explanation as to why it was not addressed in the analysis to date.

III. Cooperating Agency Process

The cooperating agency process was not without disagreement or frustration as our opportunity to engage with the federal agency, as outlined by the Counsel of Environmental Quality's (CEQ) NEPA regulations and was written into our MOUs, was ignored by the BLM. When these conflicts arose, Wyoming counties did everything in our power, and in accordance with our MOUs, to raise concerns expeditiously to resolve issues, as expressed in our candid conversations and frank letters.

While the DRMPA expresses numerous successes for cooperation throughout the process, there were certainly places that could have been improved. We also realize that the BLM is generically referred to, however, it must be clarified that this process was not run by the Wyoming state office but rather BLM Headquarters. This enlarged scale may be partly to blame for process failures during the cooperating agency process.

Unfortunately, Wyoming counties were powerless in directing how the BLM ran its cooperating agency process and meaningful opportunities for participation in the amendment process were far and few between. In an attempt to remedy this problem, Wyoming counties verbally requested

improvements and sent numerous letters asking the BLM to improve the cooperating agency process and work in good faith with cooperators.

Our first letter in June of 2023 asked the BLM to develop a regular schedule of meetings (previous meetings were sprung on cooperators with minimal notice), to provide documents to review before the meetings, and to have the individuals at the BLM actually in charge of drafting the documents in the meetings. BLM did set up regular meetings and invited members of BLM HQ to participate, but documents were not shared with cooperators in advance of, or after, the meetings.

Our second letter in August of 2023 requested the BLM follow its MOU which detailed how cooperators would be assisting in the determination of the purpose and need, development of the alternatives and management prescriptions, along with an estimation of effects of implementing each alternative. Up to this point, cooperators had only been used as editors of small portions of the management prescription tables (never impact analysis), without having the benefit of previously discussing the management prescriptions in a cooperating agency meeting.

The Western Governors' Association (WGA) wrote a similar letter to the BLM outlining concerns that it had with the mapping process, the lack of inclusion of state plans as separate alternatives, and inconsistent information shared to members of its taskforce. This letter prompted the BLM to engage the WGA Taskforce in cooperating agency meetings. While a positive development for Taskforce members, counties serving as cooperators were not invited. Additionally, it became clear that the BLM was treating the Taskforce differently as it began to share many of the documents requested by counties with the Taskforce, albeit with a disclaimer "that these documents not be shared beyond the SG Task Force."

Our third letter in December of 2023 expressed our exasperation of being given an administrative draft, most of which we had never seen or discussed, to review over the Christmas Holiday. This was the first time that any information concerning the environmental or socio-economic impacts from the range of alternatives was provided to cooperators. Unfortunately, the BLM administrative draft was largely incomplete, inconsistent, and had several sections that were simply incorrect. Specifically, it lacked impact analysis for an entire alternative, it presented erroneous acreage figures and tables for Wyoming, and was woefully inaccurate in its description of socioeconomic impacts from fluid mineral leasing and development.

The BLM acknowledged these errors and promised Wyoming cooperating counties a second review of an updated draft of the socioeconomic sections before the release of the public draft. The BLM failed to uphold this promise and cooperators were never shown updated socioeconomic information before the draft went public.

IV. Consistency with Niobrara County Natural Resource Management Plan

The Federal Land Policy and Management Act (FLPMA), which governs the BLM, provides detailed requirements for "coordination" and "consistency" with local government land use plans. FLPMA states:

> To the extent practical, the BLM must stay apprised of local land use plans. The BLM must ensure that local land use plans germane to the development of BLM land use plans are given consideration. To the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans. The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. 43 U.S.C. § 1712(c)(9).

There is no indication in the DEIS that BLM was apprised of local land use plans or assured that those plans were given consideration as required by FLMPA. Nowhere in the DRMPA does the BLM even quantify the local plans within the amendment area, not to mention, assure those plans are given consideration. At a minimum, the BLM should include a list of the local land use plans that are within the amendment boundary. For further assistance, Niobrara County has attached its Niobrara County Natural Resource Management Plan, dated August 3, 2021, in its entirety for your consideration. Niobrara County has also attached Resolution 21-12 "Resolution Approving the Niobrara County Natural Resource Management Plan" dated August 3,2021.

FLPMA also requires that within the environmental consequences section of an EIS, the BLM include a discussion of all "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(a)(5). Further, where any inconsistency exists, the BLM is required to provide a statement describing "the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d). An RMP may be inconsistent with local plans only where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and regulations applicable to public lands. *Id*.; 43 C.F.R. § 1610.3-2(a).

There is no discussion of possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. Not only does this discussion concern local land use plans, but the BLM must also discuss the conflicts with its own mandates and laws. Specifically, it should discuss the obvious conflicts present in Alternative 3 with its multiple use and sustained yield mandate.

The BLM seems to suggest it does not need to do additional consistency review when it states on page ES-12: "Some counties identified their preference for management actions from one alternative or another. It is important to note that these preferences did not specifically cite state or county plan, program, or policy language."

This statement is false and should be removed from the DRMPA. Counties and the State of Wyoming both provided verbal and written comments and identified preferences of management actions based on the State's EO and county plans, programs, and policies. To the extent that additional citation or specificity was desired, the BLM should have asked for it and provided an opportunity for cooperators to provide it.

The DEIS rightfully acknowledges on page 1-12 that "BLM RMPs be consistent with officially approved or adopted resource-related plans of other Federal, State, local, and Tribal governments and policies and programs contained therein, to the extent that they are consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands." However, the DEIS does not address inconsistencies with local plans but instead, claims that the BLM will identify inconsistencies in the Final EIS after receiving comments from state and local government agencies.

Niobrara County believes that the BLM's approach of waiting until the final stage to address inconsistencies in the EIS is flawed. This delay prevents state and local government agencies from providing input during the drafting phase, which could have led to substantive comments that might alter the project's components and subsequent analyses. A federal agency should not address consistency solely by responding to concerns raised through comments. Instead, the BLM should have taken an active approach in identifying inconsistencies and addressing them in the DEIS. It is clear that the process by which BLM included a thorough consistency review of the Niobrara County local natural resource plan fell far short of adequate and examples of specific inconsistencies will be detailed in this letter below.

IV. Disturbance Caps

The County recognizes the importance and necessity of establishing appropriate disturbance caps to ensure that disturbance to an area does not exceed tolerance levels of the GrSG. The Wyoming State Legislature, federal, state and local agencies, industries, conservation organizations, and landowners have dedicated significant time and resources to conserve GrSG populations in the State. We have shown the capacity and authority to protect and manage the species and its habitats on all lands by establishing oversight mechanisms and implementing protection measures, including developing a disturbance cap using the Density Disturbance Calculation Tool (DDCT). The DDCT establishes a disturbance cap of 5% for suitable GrSG habitat per an average of 640 acres over the entire DDCT assessment area.

To align with the State's EO for GrSG management strategies and to facilitate prompt calculations of disturbance areas, the County suggests that Wyoming be exempt from the 3% HAF fine scale disturbance cap, regardless of the chosen alternative under the EIS. While the BLM would still be able to gather and quantify whatever disturbance data it chooses, the 3% HAF fine scale disturbance cap should not be another disturbance calculator for permit authorization.

Currently, the disturbance levels in Wyoming, including those from fire and agriculture, are well below the 3% cap, making the requirement to meet this cap largely redundant and an inefficient use of time. Moreover, since the 3% HAF fine scale disturbance cap overlooks disturbances from fire and agriculture, which the DDCT includes, utilizing the DDCT for calculating the disturbance cap offers a more inclusive and simpler approach.

As stated earlier, the County supports the Wyoming EO including the utilization of the 5% surface disturbance cap along with the DDCT process, which has proven to be a sufficient management tool of surface disturbing activity within PHMA (core) habitat.

Additionally, the introduction of two disturbance caps could eventually lead to scenarios where one cap is met but the other is exceeded. The DEIS lacks clarity on how the BLM would manage such situations, potentially opening the door to disputes and outside legal challenges. Niobrara County is concerned that any perceived discrepancy between the two disturbance calculations could fuel litigation from parties with the intent of halting the permit process. Clarity is key.

If the BLM proceeds with dual disturbance caps, Niobrara County would expect the agency to honor its verbal commitment made at the SGIT public meeting on May 29th, 2024, to engage with the State of Wyoming when discrepancies between disturbance caps arise.

Ultimately, by adhering to the established DDCT 5% disturbance cap, the BLM would not only effectively safeguard the habitat of the GrSG from excessive disturbance but also circumvent unnecessary project delays that could stem from additional coordination and potential litigation.

V. Grazing Management Objectives

Agriculture and livestock production in the County is necessary for the economy, its tax base, and the livelihood of the ranching/farming businesses and related industries. It is also vital to the well-being and continued health of natural resources on federal, state, and private lands. The range production of livestock and livestock grazing are management tools that are used to maintain and enhance the rangeland resource, which benefits watersheds, wildlife, water quality, and recreation, as well as providing needed forage for sustaining livestock production and wildlife habitat. Livestock grazing has been a major industry in Niobrara County since early settlement and continues to be a vital part of the custom and culture of the County as well as an economic driver.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 158-159 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

8.1.1 *Livestock Grazing Resource Management Objectives:*

A. Livestock grazing is maintained as a viable major component of the economy, custom, and culture of Niobrara County.
B. Wyoming Standards for Healthy Rangelands are used as the basis for administering livestock grazing on Bureau of Land Management managed lands.

8.1.2 *Livestock Grazing Priority Statements:*

1. Federal grazing allotments that are not officially closed or not actively being used shall be grazed.
2. Federal agencies should support the recognition and protection of the right to graze livestock on public lands through legal recognition of grazing preference rights.

3. Federal agencies should support range livestock production that is environmentally and economically viable.
4. Federal agencies should recognize locally led and coordinated resource management planning to resolve management conflicts and to ensure involvement of all interests.

In addition, Niobrara County encourages BLM to be consistent with the BLM Land Health Standards LHS) and specifically Standard 4 which addresses special status species management (SSS). Furthermore, the management prescriptions pertaining to livestock grazing identified in Chapter 2 (page 2-104, Table 2-12) of the DEIS should be made consistent in Chapter 4 and throughout the entirety of the document.

Specific to Adaptive Management (AM) and grazing in Alternatives 3-6, BLM has removed livestock grazing from the narrative and embedded it in the alternatives table in Chapter 2. The language in the alternatives table for AM is not consistent with current BLM rules and regulations, nor is it consistent with the Alternatives for Livestock Grazing in Chapter 2.

BLM should allow for grazing to be included in the AM process and be consistent with existing alternative language. BLM uses the terms "causal" and "contributing factors" incorrectly. Livestock grazing must be identified as a significant causal factor for LHS SSS before any modifications occur to a livestock grazing permit or leases. The County requests that the following language be considered in the alternatives: Specific to GrSG habitat, manage livestock grazing in a manner that 1) meets or makes progress toward meeting the Land Health Standard for special status species, and applies the guideline that addresses "restoring, maintaining, or enhancing habitats of...special status species to promote their conservation." (43 CFR Part 4180.2(e)(9))

Moreover, under Alternative 3, BLM analyzed for a "no grazing" alternative for all states stating "…Because PHMA would be unavailable for livestock grazing, no overarching livestock grazing objective would be needed." This alternative is economically and technically unfeasible to implement as it is in violation of the Taylor Grazing Act. The most appropriate action, as identified by the CEQ NEPA Regulations, would have been for BLM to consider it and eliminate it from further analysis as it does not meet the standard of alternatives that should be analyzed as "technically or economically" feasible. The County is strongly opposed to a "no grazing alternative" in any form.

Regarding fencing, the County generally supports wildlife friendly fencing; however, BLM must coordinate with the applicable grazing lessees should the removal of fencing be considered as those decisions could impact grazing allotments and management of the resource. Finally, any changes in grazing management should consider effects to the adjoining private or state lands as this could impact grazing management practices.

As demonstrated, agriculture production and livestock grazing are significant for the Counties. Not only do they provide an important tax base, but the industry is also an historical part of the local custom and culture. In the preferred alternative, the County supports the maximum amount of animal unit months (AUMs) being available for livestock grazing on BLM lands in PHMA and GHMA.

VI. Mitigation

Wyoming remains committed to working with its federal partners to develop a mitigation strategy that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. While BLM must adhere to its mitigation hierarchy (avoid, minimize, rectify, reduce, compensate), the County encourages the federal agency to work with the State of Wyoming by following the well-founded principles in the EO regarding adaptive management and the mitigation framework which includes steps for requiring compensatory mitigation. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner and provides regulatory certainty for all parties involved.

VII. Private Property Rights

As stated earlier, Niobrara County is rich in federal resources as our lands are comprised of approximately 8% *federal surface* and an estimated 45% *federal minerals*. Farming, ranching, energy development, tourism and recreation contribute heavily to the heritage of the County. Rangeland used by livestock and agricultural producers continues to be the dominant land use and federal agencies should consider the effects their decisions will have on neighboring private lands.

Furthermore, access to, or restrictions from, crossing federal, state, or county managed lands should not entail encumbrances or constraints on private property. Private property rights are the cornerstone of our County and must be protected to ensure that our continued customs and culture remain intact. When an agency decision or proposed action will have a negative impact to the current use of neighboring private lands, that federal undertaking may not be supported by the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Page 10 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

1.5.1 *Resource Management Objectives (Private Property Rights):*

A. The fundamental rights of mankind as enumerated in the Declaration of Independence, the constitutional rights of citizens as set forth in the U.S. Constitution and Bill of Rights, and the Wyoming Constitution are reaffirmed, and the limited nature of government as intended by the nation's founding fathers is acknowledged.
B. Private property and interests in private property are protected and the continuation of private economic pursuits is promoted within Niobrara County.
C. The principles of due process are applied and followed at all levels of government within Niobrara County.

1.5.2 *Priority Statements (Private Property Rights):*

1. Federal agencies should respect private property rights and consider the effects of

policies, regulations, and decisions on these rights.

2. Federal agencies shall conduct a takings implication assessment pursuant to Executive Order 12630[1] [Addendum Tab No. 47 at 236] for each federal action and should allow Niobrara County to provide comments regarding said assessment.
3. Federal agencies should recognize that the protection and preservation of privately owned land are desirable and necessary in Niobrara County.
4. Federal agencies should coordinate with Niobrara County to facilitate the opportunity of County citizens to be heard in the appropriate proceeding.
5. Federal agencies should promote the disclosure and public education of proposed actions, regulations, policies, and land use plan decisions that affect Niobrara County.
6. Federal agencies should avoid conflicts of interest in all decisions and disclose to the public when a possible conflict of interest exists.
7. Federal agencies should work with Niobrara County to ensure due process is given in all situations.

Niobrara County is particularly concerned about the failure of the DRMPA from analyzing the effects on neighboring state and private lands in the analysis area. Whether described as adjacency effects or cumulative effects, in a state where the BLM manages approximately 18 million surface acres and 41 million subsurface acers (66% of the state), there are substantial impacts to private and state lands across the decision area.

Management and ownership patterns lack uniformity creating a complex and interwoven mix of state, private, and federal minerals that are often "coproduced." The scale of coproduction can vary in degree and can be described in several ways. First, oil and gas can be coproduced by an individual wellbore that crosses through and produces the varying mineral estates. Second, oil and gas can be coproduced inside a drilling and spacing unit, where specific production is pro-rated to the percent of ownership in the drilling area. Finally, oil and gas can be coproduced across the entirety of a company's development play.

Oil and gas companies, like any other enterprise, must take into account risk/reward, scalability for cost saving, future development potential, infrastructure needs, and regulatory regimes. Operators prioritize areas for development where they can maximize returns and reduce risks. In the current phase of development in Wyoming's Powder River Basin, operators have large swaths of development to minimize risks, provide operational flexibility, and cost share infrastructure.

Even where a wellbore doesn't penetrate federal minerals in a particular drilling and spacing unit, gathering lines, pipelines, transmission lines, and roads to get product to the market inevitably run into federal management at some juncture. Therefore, ROW and surface occupancy restrictions have significant implications for private and state lands and minerals.

This analysis needs to be included in DRMPA. The BLM should acknowledge and analyze the cumulative effects of restrictions on the socioeconomics of our communities. The BLM's socioeconomic analysis should describe the human interests and values shaping public lands

management, identifying effects of proposed actions on communities and economies, and promote the economic and social sustainability of communities near public lands.

VIII. Adaptive Management

Wyoming has worked diligently with its federal partners (BLM and USFWS) to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner.

Under Wyoming Statute § 23-1-103, "…all wildlife in Wyoming is the property of the state…" and the Wyoming Game and Fish Department (WGFD) has the legal responsibility for carrying out the purposes of this act. Using the best available science in the Adaptive Management process is necessary to continue long-term healthy populations of GrSG. Recognizing the WGFDs expertise, the State's Adaptive Management strategy places the responsibility of conducting annual population data squarely with the state agency. It is imperative that BLM recognize the WGFDs authority and expertise in this process. The County implores BLM to defer to the WGFD regarding any data collection or management decisions that pertain to the population trend analysis of GrSG within the boundaries of Wyoming.

IX. Wild Horses

In 1971, Congress enacted the Wild Free-Roaming Horse and Burro Act (Public Law 92-195), which guides the management, protection and control of wild horses and burros on federal lands managed by the USFS and BLM. Herd Management Areas (HMAs) were established in ten Western states based on the existing populations during the passing of the Act in 1971. This Act also mandates that wild/feral horses and burros are managed in a thriving ecological balance with the land and as part of the natural landscape (USFS 2021b). To ensure wild/feral horse and burro populations remain in good condition and that federal lands are protected from degradation, the growth of wild/feral horse and burro herds must be actively managed.

Population control is necessary to protect fragile ecosystems, balance shared use of resources by wildlife, maintain herd health and protect herds from starvation. Niobrara County encourages aggressive wild horse and burro management that will not adversely impact rangeland resources, livestock or grazing, wildlife habitat or resources, soil resources, or other varied land uses.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Page 134 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

6.1.1 *Wild Horse and Estray Livestock Resource Management Objectives:*

A. No Herd Management Areas or Herd Areas will be designated or created in Niobrara County.

B. Niobrara County and Niobrara Conservation District will be notified and coordinated with if there are any intentions to designate or create Herd Management Areas or Herd Areas in the County.
C. Any estray livestock from public or private lands are immediately gathered and removed per Wyo. Stat. § 11-24-101.

6.1.2 *Wild Horse and Estray Livestock Priority Statements:*

1. Federal agencies should notify and coordinate with Niobrara County and Niobrara Conservation District if there are any intentions to designate or create Herd Management Areas or Herd Areas within the County.
2. Niobrara County opposes any proposed creation, enlargement, or expansion of the current herd management area (HMA) or herd area (HA) boundaries and the designation of any additional new HMAs or HAs within the County.

The only viable alternative analyzed that appropriately addresses actual management of wild horses and burros is Alternative 3 (page 2-114, Table 2-13). Managing for "zero" Appropriate Management Levels (AMLs) within HMAs that overlap with PHMA and removing wild horses in those areas is the proper land management prescription and is the only realistic method for meeting AML at the implementation level. For the benefit of the GrSG, all available agency tools must be used to support herd management plans that prevent habitat degradation and native wildlife displacement, including the removal of all wild horses and burros from PHMA.

The State of Wyoming submitted alternative language for wild horses that based any removal of HMAs on whether wild horses were the causal factor of range degradation for a certain period of years. While substantial evidence already exists, that wild horses cause significant range damage and negatively impact GrSG, Wyoming's recommended approach would have been more economically, politically, and scientifically defensible. Unfortunately, this alternative was not properly considered in any of the other alternatives.

X. Lack of Need for ACECs

The WCCA conducted a consistency review on a statewide basis of the DEIS alternatives in relation to ACECs and county natural resource plans, which is summarized in the attached table. In addition to the consistency table, the text below details the concerns regarding the BLM's inadequate and untimely consistency review and the unnecessary designation of ACECs in areas with existing and adequate PHMA designations to manage for and protect GrSG.

An ACEC is defined as "areas within the public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a).

A potential ACEC must satisfy a three-part test before it may be designated. First, it must have "relevance," meaning it possesses "a significant historic, cultural, or scenic value; a fish or wildlife

resource or other natural system or process; or natural hazard." 43 C.F.R. § 1610.7-2(a)(l). Second, it must also have "importance," meaning the relevant values identified in the first step must have "substantial significance and values." 43 C.F.R. § 1610.7-2(a)(2); see also BLM Manual 1613, Section 1 l.B. For the relevance values to meet the "importance" threshold, the area must have "more than locally significant qualities ... compared to any similar resource," have qualities that make it fragile, rare, or irreplaceable, or been recognized as warranting protection to satisfy national priority concerns. BLM Manual 1613, Section 11.B.1. Third, the nominated area must require "special management" "to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish, wildlife, and plant resources, or other natural system or processes." 43 U.S.C. § 1702(a).

Certainly, ACECs can play a role in conservation and special management of historic, cultural, scenic, fish and wildlife resources. However, the BLM has not demonstrated how the addition of the proposed ACECs under Alternative 3 of the DEIS will improve Greater Sage-grouse populations and habitat more effectively than Priority Habitat Management Areas (PHMAs). Under Alternative 3, the DEIS states that the ACECs would be managed similarly to PHMAs, without additional management prescriptions. Niobrara County strongly feels that the designation of ACECs under Alternative 3 are unnecessary given that they will be managed exactly the same as PHMAs. The BLM fails to consider how GrSG populations and habitat are already protected under existing management actions and will be further protected by the proposed management actions under Alternatives 3 of the DEIS. A significant example of this failure is the BLM's attempt to layer ACEC designations on top of existing ACECs like in Fremont and Sublette Counties.

Furthermore, ACEC designations could allow for excessive regulatory authority in the future for areas that are otherwise considered appropriate for PHMA management. Unnecessary designation opens the door for further impediments to multiple use practices.

For the BLM's convenience, we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 38-39 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

3.1.1 *Special Designation and Management Area Resource Management Objectives:*

A. Designation and management of special designation or management lands are coordinated with Niobrara County and adjacent landowners and allow for multiple use.
B. No new special designation or management areas are created in Niobrara County without approval from the County and the Niobrara Conservation District.
C. Visual resources are protected while maintaining economic stability and underlying land use allocations in Niobrara County.
D. Private land uses, state lands rights, and federal land use allocations are protected by adjusting Visual Resource Management classifications to be consistent with the land uses.
E. Wild and Scenic River proposals are evaluated to determine the impact on water rights and the ability to utilize water rights in the future.

3.1.2 *Special Designation and Management Area Priority Statements:*

1. Federal agencies shall consult and coordinate with Niobrara County as early as possible when considering the designation of new special designation areas.
2. Any proposed special management area designation shall undergo analysis of the impact on Niobrara County's custom, culture, and economy.
3. Federal management of special designation areas shall be coordinated with Niobrara County and be consistent to the maximum degree with the Niobrara County Natural Resource Management Plan.

Niobrara County strongly opposes the designation of any Sage-grouse ACECs in Wyoming. As discussed earlier in these comments, we have worked diligently as a state to develop a framework that effectively manages for GrSG populations and its habitat and no new ACEC designations are warranted, nor will they provide any additional protections not already in place.

XI. Fluid Mineral Development and Leasing Objective

Likely the most substantial direct impact to local government revenue in Wyoming is the management prescription for oil and gas development. Consequently, it is vital to correctly capture existing development and the Reasonably Foreseeable Development Scenario (RFDs). The RFD is even more important to get correct when it is comparing the potential impacts from wildly inconsistent alternatives. If poor or incorrect data is utilized to develop the RFD, then the RFD and resulting socioeconomic analysis will be flawed.

Certain portions of the BLM's description and analysis of existing oil and gas could be improved. For example, on 12-38 the BLM reports 9,127 wells have been "drilled" in Wyoming between 2013 and 2023. However, this figure includes workovers and wells that were never completed, which may capture wells that were never actually "drilled." The section properly includes data from the Wyoming Oil and Gas Conservation Commission, which reflects a total of 6,455 unique well spuds in Wyoming between 2013 and 2023. However, the fact that the state's number is 30% less than the BLM's number reflects a poor attempt to gather and clean-up the data for analysis.

On page 12-39, the DRMPA states that 24% of the HMAs in Wyoming are under an existing authorized lease. Additional data that should have been reflected in the DRMPA and clarified in this section is the number of leased acreages currently under litigation in Wyoming. Without including litigated leases in Table 35, it is misleading to members of the public that equate "authorized" as available for development.

In order to understand whether the RFD is truly reasonable there should be a greater description of what was utilized for inputs and variables. Table 35 in Appendix 12 would benefit from a better description of the "source" of the data provided in the table. In addition, there needs to be additional description of the table to help clarify whether these projected wells are federal surface and minerals, private/state surface and federal minerals, or mixed minerals and surface, etc.

The “Projected Production by Alternative in the Decision Area” needs to be amended to more accurately reflect the decline curves associated with modern horizontal development in Wyoming. Without any written description or justification, the projection utilizes a record production year in Wyoming as its basis for production over the next 20 years. In other words, the current projections do not consider decline curves of existing and new wells but keep historic production levels constant. However, it must be noted that the only way to maintain that statewide production level as production declines from existing wells is to drill and produce new wells.

The problem with maintaining existing production as a constant in the RFD is that it artificially reduces the negative economic impacts associated with alternatives 3 and 4 reduced projected well development. This is because the weight given to new wells is significantly reduced by the artificial base production of the existing wells.

Under Alternative 3 only 4,284 wells are expected to be drilled in the next 20 years. This is compared to Alternative 1 that projects 14,450 wells drilled in the same period of time. Although alternative 3 projects over 10,000 less wells are drilled in 20 years it only reduces the production of oil by roughly 224,000,000 barrels and gas by 4,600,000,000 mcf of gas.

Taxes derived from oil and gas development in Wyoming constitutes a significant portion of state and county revenue used to pay for public education and essential services, including roads, fire protection, emergency medical services, courthouses, libraries, landfills, hospitals, law enforcement, airports, recreation, and senior citizen centers. In Niobrara County, oil and gas production and liquid pipeline tax revenues make up 52% of our assessed valuation.

Oil and gas companies operating in Wyoming are assessed property (ad valorem) taxes by counties and severance taxes by the state. Although they are called “taxes” both are more akin to a royalty because production is taxed regardless of whether an operator makes a profit. Property taxes on oil and gas vary by county and range from 6-7.3% calculated by the gross revenue of the previous year’s production and the value of tangible equipment and improvements. Severance taxes are calculated at 6% of gross revenue in the same manner as royalty taxes (gross revenue minus transportation and gas processing cost). Federal Royalties are also deducted from the gross revenue for the purpose of calculating severance taxes.

Property taxes on oil and gas account for over 40% of the total property taxes levied by counties in Wyoming. In 2020, the property taxes collected by counties exceeded $600 million. Additionally, severance taxes collected by the state in 2022 topped $275 million. When adding in federal lease revenues, federal and state royalties, sale and use taxes, and conservation taxes, the industry contributed $1.23 billion in taxes to state and local governments.

Oil and gas development is also subject to sales and use taxes. Over the past 12 months, the average monthly sales tax generated and paid by mining industries represented approximately 23% of sales tax collected in Niobrara County. Although the State of Wyoming gets the majority of sales tax

collected, the portion allocated locally is distributed to the County as well as the towns of Lusk, Manville and Van Tassell.

Furthermore, in 2023 ad valorem tax paid by oil and gas producers and pipeline companies represents 52% of all property tax paid in the County. A decrease in assessed valuation will affect all County operations including essential services such as public safety, law enforcement, courthouse operations, library, fairgrounds, and road and bridge maintenance. Also affected will be local hospital, fire, conservation, and weed and pest districts.

As noted on the Petroleum Association of Wyoming (PAW) website, Wyoming ranked 8th in production of both crude oil and natural gas in 2022 nationally. Further, Wyoming ranked the 2nd largest producer of both oil and natural gas on federal lands, making the state disproportionally affected by national policy changes. According to a 2023 study released by the American Petroleum Institute, in 2021 the oil and natural gas had the following impacts on the Wyoming economy: 58,780 total jobs and $5.7 Billion in labor income.
For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 69-71 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

4.5.1.3 *Oil and Gas Resource Management Objectives:*

A. Oil and gas extraction is managed in a responsible way that promotes Niobrara County's economic viability along with the health of both ecosystems and citizens of the County.
B. Niobrara County and Niobrara Conservation District are given meaningful participation in the permitting process for all extraction activities in the area.
C. Suitable oil and gas exploration and development occurs in Niobrara County while conserving rangeland, soil, fish and wildlife habitat, air quality, visual resources, and water resources.
D. Surface owners and their existing uses are protected when there is a federal split estate minerals on private lands.

4.5.1.4 *Oil and Gas Priority Statements:*

1. The permitting process for new oil and gas drilling activities within Niobrara County should be efficient and timelines should follow Council on Environmental Quality National Environmental Policy Act guidelines to allow for more exploratory drilling and improved access to reserves.
2. The permitting processes for new activities within Niobrara County should be efficient and timelines should follow Council on Environmental Quality National Environmental Policy Act guidelines to allow for more exploratory drilling operations and improved access to reserves.
3. Federal agencies should update Niobrara County at least quarterly as to the status of all pending applications for permit to drill in Niobrara and explain to the County an expected timeline for a decision for each permit.

4. Niobrara County and Niobrara Conservation District should be informed of all potential uses of county roads and resources from oil and gas activities and associated impacts to those resources.

Funding derived from mineral development constitutes a significant portion of State and County revenue used to pay for essential services, including roads, fire protection, courthouses and judicial systems, libraries, landfills, hospitals, law enforcement, airports, recreation, public health, and senior citizen centers. Any curtailment of leasing and development activity significantly impacts the socio-economics of the communities and eliminates a critical funding stream for not just our County but all counties, the State of Wyoming and its residents.

Our ability to fund organizations would be negatively affected, which includes but is not limited to, the following: WY Child and Family Development, Children's Advocacy Project (forensic interviewing of sexually assaulted and abused children), Human Resource Council, 'Youth Development Services (Youth Crisis and Intervention Center)', Humane Society, Boys and Girls Clubs, County Fair Boards, Hope Center (Domestic Violence and Sexual Assault Survivors Crisis Center and Shelter), local Libraries, Behavioral and Mental Health Crisis and Intervention Centers, Economic Development organizations and various youth and community recreation organizations. Without County support these organizations will offer fewer public services and could fail and there would be insufficient funds to provide basic services at a level needed for the protection of the county resident's health, safety, and security.

It cannot be stated enough the importance that the oil and gas industry plays in Wyoming. BLM must do all it can to find a balance between GrSG species and habitat protection with continued mineral leasing and development. This balance must be made in consideration of the interwoven land ownership patterns across Wyoming.

XII. Transportation and Transmission Objectives

Public access to routes of travel is essential to the County's transportation and public access systems and to the economic, social, political well-being, customs and culture of the communities. Many private landowners need rights-of-way across state and federal lands to access their property, to use their water rights, and to exercise their grazing rights. Rights-of-ways (ROW) and corridors provide for the development of certain types of infrastructure or facilities that are in the public interest on federal lands for a specified period of time.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 33-35 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

3.1.1 *Transportation and Land Access Resource Management Objectives:*

A. There is full and open access to and through Niobrara County federal lands for local purposes such as safety, health, rural access to population centers, use of agriculture,

timber, forest management, mining/oil and gas industries, recreational purposes, and communication infrastructure.

B. Private property rights are protected in Niobrara County while facilitating rights of access.
C. A coordinated approach is developed to address roads and rights-of-ways with local, state, and federal agencies and private landowners within Niobrara County.
D. New rights-of-ways and road systems are evaluated in consideration of identified needs, in alignment with Niobrara County's Natural Resource Management Plan, goals and objectives, and private property rights.
E. Continued and consistent access to natural resources on federal and state lands in Niobrara County is ensured.
F. All federal agencies' travel management planning efforts are coordinated with Niobrara County.

3.1.2 *Transportation and Land Access Priority Statements:*

1. Federal agencies should support identification and protection of all Niobrara County roads and public rights-of-ways to protect the County's resources and promote public health, safety, and general welfare, including but not limited to, search and rescue, extreme weather, fire protection, resource conservation, health and law enforcement, and other services.
2. Federal agencies should support the designation of currently open motorized and non-motorized trails, rights-of-way, and roads as open transportation networks within Niobrara County.
3. No road, trail, or R.S. 2477 rights-of-way shall be closed in Niobrara County unless public safety or health demands its closing and the proper analysis and disclosure, in consultation with Niobrara County and private property owners, is completed prior to closure.

Regarding approved access for transportation or transmission within PHMA, the County will support the Wyoming EO and the surface disturbance DDCT process for determining access. However, we strongly encourage BLM and the state to coordinate and consult with the affected County regarding any planning process or activity that restricts, eliminates, increases, or decreases access to federal or state lands and allow the County the opportunity to resolve any potential conflicts with the County's objectives, principles, and policies, prior to acting.

XIII. Socioeconomics

Economic impacts do matter. Access to federally administered lands and resources are critical to ensure the socioeconomic well-being, custom, culture and stability of our communities. In Niobrara County, lands under federal or state control and decisions made for public land management can directly impact the service and non-service industries, public accessibility, and the demographics of an area. Effective coordination and consultation between the County, federal and state agencies is critical to ensuring that land management agencies thoroughly consider the effects that proposed actions have on custom, culture, and economic stability; conservation and use of the environment

and natural resources in the County along with multiple use. Counties receive revenue from federal lands in many ways including mineral leasing and development, agriculture, recreation, travel and tourism, etc. Any curtailment of access to public lands will directly impact the socioeconomics of the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 149-150 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

7.1.1 *Economic Resource Management Objectives*

A. The socioeconomic and economic viability of Niobrara County is prioritized, protected, and enhanced in all federal actions or decisions.
B. Federal agencies follow the timing and page limit requirements set forth in the July 16, 2020, Council on Environmental Quality NEPA regulations.
C. Niobrara County and Niobrara Conservation District are included early in the scoping process whenever an agency action or decision may impact the economic or socioeconomic viability of the County.

7.1.2 *Economic Priority Statements:*

1. Niobrara County and Niobrara Conservation District require consultation and coordination from federal agencies at the earliest time possible for any proposed action, change of existing activities, newly permitted activities, or changes in regulations that may affect the economic basis of the County.
2. Federal agencies should support continued access to natural resources development/use on federal lands to maintain economically viable communities in Niobrara County.
3. Niobrara County and Niobrara Conservation District support “no net loss” in the County's economic base due to federal agency decisions.

A copy of the Niobrara County Socio-Economic Report dated December 2021 and prepared by: Reid Hensen and Y2 Consultants, LLC is sent with this letter.

The County cannot state clearly enough the importance of our ability to access federal lands to drive vibrant economic communities. BLM significantly undervalued the mineral contributions to the counties and state in the socioeconomic section. BLM must include a robust socioeconomic analysis clearly demonstrating the differences between management prescriptions in the Alternatives, which includes impacts to the tax base (royalties, rents or bonus bids, severance taxes, ad valorum taxes, sales and use tax employment income, and direct and indirect employment.) The County can assist in providing the most up-to-date information available for BLMs analysis.

In conclusion, Niobrara County is committed to continuing our engagement as a cooperating agency along with the State of Wyoming, its state agencies and BLM to work through these important issues. We encourage BLM to align with the most recent Wyoming EO, include acknowledgement

and analysis of the Wyoming State Alternative and to develop a preferred alternative that takes into consideration our comments submitted herein.

Patrick H. Wade, Chairman
Niobrara County Commissioners

CC: The Honorable Governor Mark Gordon
The Honorable United States Senator John Barrasso
The Honorable United States Senator Cynthia Lummis
The Honorable United States Congressman Harriet Hageman

Wyoming Wilderness Association
PO Box 6588
Sheridan, WY 82801
307.672.2751

June 13, 2024

RE: Draft RMPA and DEIS for Greater Sage-Grouse Rangewide Planning
Submitted electronically via: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

Thank you for this opportunity to provide comments regarding the Draft Resource Management Plan Amendment and Environmental Impact Statement (DEIS) for Greater Sage-Grouse Rangewide Planning (89 Fed. Reg. 18963). Please accept the following comments on behalf of the Wyoming Wilderness Association (WWA), a nonprofit education, stewardship and advocacy organization protecting Wyoming's public wildlands. Our organization represents nearly 3,000 members and supporters from across Wyoming and the United States who value Wyoming's public wildlands. WWA is involved in statewide efforts to protect the last remnants of wilderness-quality lands and voice the importance and value of these wild places. We have been involved with management plan decisions affecting greater sage-grouse on Wyoming BLM wildlands for several decades and have nominated two Areas of Critical Environmental Concern (ACEC) that are being analyzed under the current DEIS. We appreciate your consideration of our comments.

While there are a myriad of management decisions analyzed in the DEIS of importance to the ecological integrity of Wyoming wildlands, here we will focus our comments on two proposed ACECs nominated by WWA along with a coalition of local and national conservation organizations: Little Sandy ACEC and Red Desert ACEC.

Preserving the Vitality of the Greater Sage-Grouse is Contingent Upon Preserving the Vitality of the Sagebrush Biome

In 2022 the Department of the Interior published the Sagebrush Conservation Design Report in which it found that 1.3 million acres of sagebrush steppe are being lost each year.[1] Assuming that trajectory continues, we have a little over 100 years before it is gone, and the greater sage-grouse along with it. In developing a strategy to address this decline, the report identified core sagebrush areas with high ecological integrity, and growth opportunity areas with strong potential for returning to high ecological integrity, across the sagebrush biome.[2] Combined, core sagebrush areas and growth opportunity areas represent 117 million acres, nearly two-thirds of the sagebrush biome.[3] The report identified an association between high sage-grouse population performance and high ecological integrity within these core and growth opportunity areas.[4] Furthermore, the report indicates about 73 percent of the threats facing the sagebrush biome are non-point source, but rather a result of complex ecosystem function problems that include, but are not limited to point-source human development.[5]

1. Doherty, K., Theobald, D.M., Bradford, J.B., Wiechman, L.A., Bedrosian, G., Boyd, C.S., Cahill, M., Coates, P.S., Creutzburg, M.K., Crist, M.R., Finn, S.P., Kumar, A.V., Littlefield, C.E., Maestas, J.D., Prentice, K.L., Prochazka, B.G., Remington, T.E., Sparklin, W.D., Tull, J.C., Wurtzebach, Z., and Zeller, K.A., 2022, A sagebrush conservation design to proactively restore America's sagebrush biome: U.S. Geological Survey Open-File Report 2022–1081, 38 p., ttps://doi.org/10.3133/ofr20221081.
2. Id.
3. Id.
4. Id.
5. Id.

In a recent letter to the editor[6] Tom Christiansen, former Wyoming Game and Fish sage-grouse biologist for 33 years, remarked

> "*As I review the [GRSG RMP Amendment] plan and discuss the issues with former colleagues I've come to the conclusion that it is now imperative that all of our collaborative conservation efforts shift from a sage-grouse focus to a sagebrush biome focus in order to more effectively address the threats facing not only sage-grouse but the entire ecosystem and those species, including human users, reliant on it. I implore the BLM to better incorporate this concept into their decision document…there are some relatively intact landscapes that rise above others in terms of their value to sage-grouse and associated species. I support efforts to secure the most effective protections for these 'best of the best' areas which are resistant to impacts like invasive species and resilient in their ability to return to good habitat after an impact such as wildfire. They are the cornerstones upon which the survival of the sage-grouse depends. Irreplaceable places, such as the Golden Triangle in western Wyoming, have such high biological value that these should have the highest level of protections."*

We agree with Mr. Christiansen's assertion that sage-grouse conservation efforts must shift from a focus solely on a single species, the greater sage-grouse, to preserving the sagebrush biome as a whole, with special attention provided for the best of the best landscapes. Threats to sage-grouse are intertwined with the complex ecosystem function problems described in the 2022 DOI Sagebrush Conservation Design Report noted above, indicating a more holistic approach is needed to address these complexities and nuances. The proposed Little Sandy and Red Desert ACECs are the best tool for achieving holistic, equitable management for some of the best areas of sagebrush steppe remaining in Wyoming. We commend the BLM for analyzing ACECs within the DEIS as potential mechanisms for protecting not only this sensitive species, but also the vitality of the entire ecosystem, as well as Indigenous peoples' connections to them. We are, however, disappointed to see these ACECs are not included in the preferred alternative and contend they should be included within the final plan amendment. ACEC designations, with appropriate Tribal consultation, are essential for preserving the integrity of these special places and this icon of the sagebrush steppe: the greater sage-grouse.

Areas of Critical Environmental Concern as the Best Tool for Managing the Best of the Best Landscapes within the Sagebrush Biome

ACECs are an important and effective tool for sustaining healthy populations of greater sage-grouse through their ability to preserve the vitality of the surrounding ecosystem, rather than focusing solely on a singular species. Studies have shown that biodiversity is substantially higher inside intact and well-managed protected areas than in surrounding areas because protected areas reduce the loss and degradation of natural habitats[7] and slow the rate of extinction of threatened species that occur within them.[8] As greater sage-grouse teeter on the edge of endangered species status, it is imperative to protect the remaining sagebrush landscapes that have retained high biological diversity and well functioning natural ecological processes.

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6. Christiansen, Tom. *Enhancing Protections for the Greater Sage-Grouse: a Pivotal Moment for Conservation.* Casper Star Tribune. 8 May 2024. Opinion Editorial.
7. Gray, C .L., Hill, S. L .L., Newbold, T., Hudson, L. N., Bo, L., Hoskins, A. J., Ferrier, S., Purvis, A. 2016. Terrestrial Protected Areas Worldwide. Nat. Commun. https://doi.org/10. 1038/ncomms12306.
8. Butchart, S. H. M., Scharlemann, J. P. W., Evans, M. I., Quader, S., Aricò, S., Arinaitwe, J., et al. 2012. Protecting important sites for biodiversity contributes to meeting global conservation targets. PLoS One 7,e32529. https://doi.org/10.1371/journal.pone.0032529.

Additionally, in the face of climate change and human-caused stressors, protected areas must represent the full range of native ecosystem types and successional stages; be sufficiently large and well distributed to maintain viable populations of native species; be sufficiently connected to allow movement of species between areas; and be managed for ecosystem reliance so that large-scale ecological processes such as fire, floods, and disease outbreaks are allowed to occur without compromising the integrity of the landscape.[9] This is especially salient for the sagebrush biome, with its alarming yearly rate of loss due to climate change, invasive species, wildfire, and human-related activities. Wyoming encompasses a significantly large portion of the sagebrush biome and some of the largest, healthiest sage-grouse populations in the world. However, Wyoming's sagebrush ecosystem has very few formal protections in place to preserve its intactness, and it is simultaneously facing increasing demand for renewable and non-renewable energy development; recreation pressure; and other human activities leading to potential habitat degradation. Ending the trend of sagebrush habitat loss is contingent upon ensuring these landscapes remain intact, diverse, and connected. In 2015 the BLM established Priority and General Habitat Management Areas, with subsequent management stipulations, similar to those currently proposed in the DEIS, to address declines in greater sage-grouse populations and provide for sagebrush habitat retention. Greater sage-grouse populations along with sagebrush habitat; however, have continued to decline, warranting a shift in management approach and direction, especially for the best of the best sagebrush landscapes. ACECs are one of the few management tools available to the BLM that can effectively encompass a wide range of interconnected resource values while also providing sufficiently stringent management direction to protect said values. The recent Conservation and Landscape Health Rule, put in place on June 10, 2024, further strengthens the importance of ACECs and the agencies' ability to use this designation as a durable conservation tool for protecting intact landscapes and connected habitats.[10]

Additionally, holistic, equitable management of the sagebrush biome – and therefore more effective management of greater sage-grouse – depends not only on preserving the ecological resources of the area, but also on preserving and incorporating Indigenous Knowledge systems and values. Joint Secretarial Order 3403 directs the BLM to "engage affected Indian Tribes in *meaningful* consultation at the earliest phases of planning and decision-making relating to the management of Federal lands to ensure that Tribes can shape the direction of management" and to collaborate with Tribes such that they play an "integral role in decision-making related to the management of Federal lands and waters" including consultation and "capacity-building."[11] The lands within the areas analyzed by the DEIS encompass the traditional homelands and migratory territories of numerous Tribal Nations, many of which continue to practice traditional uses and reserved treaty rights on these landscapes that are dependent upon intact, functioning ecosystems as a whole, not just impacts to individual cultural sites or individual species. Cultural resources and sacred or culturally sensitive sites often cannot be separated from the health and integrity of the surrounding landscape. As is noted in SO 3403 "those lands and waters contain cultural and natural resources of significance and value to Indian Tribes and their citizens, including sacred religious sites, burial sites, wildlife, and sources of indigenous foods and medicines."[12]

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9. See, e.g., Margules, C. R., Pressey, R. L. 2000. Systematic conservation planning. Nature 405, 243–253. https://doi.org/10.1038/35012251; Dinerstein, E., Vynne, C., Sala, E., Joshi, A. R., Fernando, S., Lovejoy, T. E., Mayorga, J., Olson, D., Asner, G. P., Baillie, J. E. M., Burgess, N. D., Burkart, K., Noss, R. F., Zhang, Y. P., Baccini, A., Birch,T., Hahn, N., Joppa, L. N., Wikramanayake, E. 2019. A global deal for nature: guiding principles, milestones, and targets. Sci. Adv. 5, eaaw2869. https://doi.org/10.1126/sciadv.aaw2869; Noss, R. F., Cooperrider, A.1994. Saving Nature's Legacy: Protecting and Restoring Biodiversity. Island Press, Washington, D. C.

10. *89 FR 40308.* 43 CFR Parts 1600 and 6100 Conservation and Landscape Health § 1610.7–2

11. Secretary of Agriculture & Secretary of the Interior, Joint Secretarial Order No. 3403 on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters (November 15, 2021); see also BLM, Permanent Instruction Memorandum 2022-011, Co-Stewardship with Federally Recognized Indian and Alaska Native Tribes Pursuant to Secretary's Order 3403 (September 13, 2022) (noting that "the BLM can also use land use plans to formalize its commitment to engage in co-stewardship arrangements for subsequent implementation decisions. For example, the BLM can incorporate Tribal priorities into the designation and management of resource management areas, etc.").

12. Secretary of Agriculture & Secretary of the Interior, Joint Secretarial Order No. 3403 on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters (November 15, 2021)

It is a misconception that Tribal Nations are only concerned with archaeological sites or sacred sites, or conversely that cultural resources in the eyes of Tribal Nations only refer to archaeological resources or sacred sites. Greater sage-grouse play an integral role in many Tribal Nations' religious, cultural, and traditional practices in a manner that often cannot be considered separately from the landscape and ecosystem around them. ACECs allow for a management structure that embraces this interconnectedness between ecosystem vitality and Tribal traditional use and knowledge. We encourage BLM to ensure full compliance with its consultation obligations, including through meaningful outreach to and consultation with Tribal Nations and Tribal Historic Preservation Offices. While meaningful tribal consultation must extend to all aspects of the planning process, the BLM should consider FLPMA's mandate to prioritize the designation of Areas of Critical Environmental Concern based on their significance to Tribal Nations. As tools designed to protect values within the entirety of a landform, ecosystem, or landscape, ACECs have the potential to serve as effective frameworks for implementing Tribal co-stewardship, utilizing special management to holistically protect Tribal Cultural Sites, and Tribally-identified resources of concern therein.

Designating the Little Sandy ACEC to protect Wyoming's Golden Triangle

In December of 2022, the proposed Little Sandy ACEC was collaboratively nominated by the Wyoming Wilderness Association, Audubon Rockies, the Conservation Lands Foundation, the Indigenous Land Alliance of Wyoming, the National Audubon Society, the Sierra Club Wyoming Chapter, The Wilderness Society and Wyoming Outdoor Council. The Little Sandy ACEC nomination is based on a detailed, in-depth scientific landscape-level quantitative analysis conducted by Conservation Science Partners (attached) that explicitly demonstrates how the nominated area meets the importance, relevance and special management attention requirements for designation as outlined in BLM Manual 1613.[12]

The proposed Little Sandy ACEC encompasses over 360,000 acres of largely intact high-elevation sagebrush-steppe ecosystem bisected by perennial and ephemeral drainages, as well as aspen and conifer communities in the foothills of the Wind River Mountains. The proposed ACEC wholly overlaps with the area referred to by Tom Christiansen and other wildlife managers as "the Golden Triangle", recognized globally for its unparalleled biodiversity richness and important wildlife habitat. This area supports the healthiest remaining greater sage-grouse populations in the world.[13] The area is unique in its ecological connectivity, relative lack of development. It also supports world renowned big game migration corridors, vital big game winter range, and coincides with the designated Little Sandy Landscape Global Important Bird Area.[14] Additionally, nearly the entire area within its boundaries has been identified as a core sagebrush area under the 2022 DOI Sagebrush Conservation Design Report, making it a focal area for landscape-scale protections.[15] It also falls within one of 5 DOI-identified Sagebrush Collaborative Restoration Landscapes prioritized for agency-partner sagebrush restoration efforts.[16] Designating the area as an ACEC with the proposed management prescriptions would help facilitate restoration efforts in this area by providing more protections than are currently proposed in the DEIS, directing funding to the area, protecting successful restoration efforts in the area from future degradation, and facilitating partner and Tribal collaboration.

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12. Conservation Science Partners. 2022. A landscape-level assessment of ACEC criteria in the proposed Little Sandy Landscape ACEC. Technical Report. Truckee, CA, USA. Attachment

13.Thermeur Jr., Angus. BLM Leases 23K Acres in Sage Grouse Golden Triangle. WyoFile. 5 March 2019. https://wyofile.com/blm-leases-23k-acres-in-sage-grouse-golden-triangle/

14.Conservation Science Partners. 2022. A landscape-level assessment of Area of Critical Environmental Concern (ACEC) criteria in the proposed Little Sandy Landscape ACEC. Technical Report. Truckee, CA, USA. Attachment

15. Doherty, K., Theobald, D.M., Bradford, J.B., Wiechman, L.A., Bedrosian, G., Boyd, C.S., Cahill, M., Coates, P.S., Creutzburg, M.K., Crist, M.R., Finn, S.P., Kumar, A.V., Littlefield, C.E., Maestas, J.D., Prentice, K.L., Prochazka, B.G., Remington, T.E., Sparklin, W.D., Tull, J.C., Wurtzebach, Z., and Zeller, K.A., 2022, A sagebrush conservation design to proactively restore America's sagebrush biome: U.S. Geological Survey Open-File Report 2022–1081, 38 p., https://doi.org/10.3133/ofr20221081.

16. US Geological Survey. *Sagebrush Keystone Initiative.* Bipartisan Infrastructure Law Investments.USGS.gov. 8 February 2024. https://www.usgs.gov/special-topics/bipartisan-infrastructure-law-investments/science/sagebrush-keystone-initiative

The nominated area holds important Traditional Ecological Knowledge (TEK), which encompasses the landscape, environment, wildlife, water, and material cultural items in conjunction with oral histories passed down from Tribal ancestors. Today, members of several Tribes continue traditional cultural practices in the area that have been ongoing for thousands of years. For Tribes disenfranchised and physically distanced from the area as a result of the reservation era and forced displacement, TEK maintains their ancestral connection and cultural significance to the area. Because the nominated area is of significance to many Tribal nations, the BLM should work in cooperation with all connected Tribal nations to identify and protect the TEK and cultural values of the area as part of its management of greater sage-grouse and other important wildlife species.

Should the BLM continue forward with Alternative 5 and choose not to designate the Little Sandy ACEC with conservation-oriented management prescriptions, this area will see undue and irreparable degradation. The proposed area is more vulnerable than other regions to adverse changes associated with nearby mineral and energy resource development not prohibited under current management nor in the preferred alternative outlined in the DEIS, in spite of reports demonstrating low potential for significant extraction of these resources in the area, further highlighting the need for special management attention to protect these wildlife and ecological values and resources.[17] For instance, within the proposed Little Sandy ACEC, nearly 800 males congregate on super leks of up to 300 individuals.[18] The DEIS delineates the bulk of the Little Sandy ACEC area as a Priority Habitat Management Area with the highest level of protections afforded under said alternative.[19] However, fluid mineral leasing stipulations under the preferred Alternative 5 for PHMA in Wyoming allow for mineral leasing activities in PHMA within 0.6 miles of occupied lek sites.[20] These lek site buffers are based on outdated research; the most up to date science indicates a 3.0 mile NSO buffer around lek sites is necessary for sustaining non-migratory sage-grouse and a 4.7 mile NSO buffer is necessary for sustaining migratory populations of greater sage-grouse.[21] Buffer distances less than 3.0 miles have been shown to result in lek abandonment as well as in negative impacts to nesting and early brood-rearing sage-grouse.[22] As such, PHMA prescriptions under Alternative 5 fall woefully short of providing adequate habitat protections for functioning populations of greater sage-grouse. Additionally, tying fluid mineral development to lek site locations ignores the impacts these activities have on the rest of the surrounding sagebrush ecosystem, the vitality of which, as described above, is essential for thriving sage-grouse populations. Research has shown habitat loss to be the primary driver of greater sage-grouse population declines.[23] Road development, increase in vehicular traffic, well pads in adjacent areas that are not NSO, etc. will lead to habitat degradation and fragmentation, ground disturbance leading to a higher likelihood of invasive species transmission and proliferation, and a decrease in climate and fire resilience, all of which have been shown to contribute to a decrease in overall habitat condition and subsequently a decline in sage-grouse population productivity.[24]

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17. *See e.g.* Surdam Consulting, Inc. Evaluation for the Potential for Significant Oil and Gas Discoveries in the Big Sandy Foothills and Northern Red Desert, Wyoming. July 2020. *See also* Stilwell, Dean P. Reasonable Foreseeable Development Scenario for Oil and Gas, Rock Springs Field Office, Wyoming. Fig. 46. BLM/WY/PL-14/008+1310. 25 September 2013
18. Thermeur Jr., Angus. BLM Leases 23K Acres in Sage Grouse Golden Triangle. WyoFile. 5 March 2019. https://wyofile.com/blm-leases-23k-acres-in-sage-grouse-golden-triangle/
19. DEIS for Greater Sage-Grouse Rangewide Planning, Vol 2. Appendix 1, Map 2.5
20. DEIS for Greater Sage-Grouse Rangewide Planning, Vol 1. Chapter 2.5.2, Table 2-4
21. Coates, P.S., M. L. Casazza, E. J. Blomberg, S. C. Gardner, S. P. Espinosa, J. L. Yee, L. Wiechman, and B. J. Halstead. 2013. Evaluating Greater Sage-Grouse seasonal space use relative to leks: Implications for surface use designations in sagebrush ecosystems: Journal of Wildlife Management 77:1598–1609.
22. Knick, S. T. and S. E. Hanser. 2011. Connecting pattern and process in Greater Sage-Grouse populations and sagebrush landscapes. Studies in Avian Biology 38:383-405.
23. *See e.g.,* Connelly, J. W., and E. C. Braun. 1997. Long-term changes in sage grouse (Centrocercus urophasianus) populations in western North America. Wildlife Biology. 3:229–234. *See also,* Aldridge, C. L., S. E. Nielsen, H. L. Beyer, M. S. Boyce, J. W. Connelly, S. T. Knick, and M. A. Schroeder. 2008. Range-wide patterns of Greater Sage-Grouse persistence. Diversity and Distributions 14:983–994. *See also,* Wisdom, M. J., C. W. Meinke, S. T. Knick, and M. A. Schroeder. 2011. Factors associated with extirpation of Sage-Grouse. Studies in Avian Biology 38:451-472.
24. Doherty, K., et al. A sagebrush conservation design to proactively restore America's sagebrush biome: U.S. Geological Survey Open-File Report 2022–1081, 38p., https://doi.org/10.3133/ofr20221081.

The same can be said for other forms of non-renewable and renewable energy development and major Right-of-Ways (ROW). As noted above, the Golden Triangle area has seen continued interest from mineral and energy developers despite several reports indicating it has low potential for oil and gas development, and is much less ideally suited for wind and solar development than other areas in Wyoming.[25] Thus the risk of irreparable habitat degradation is not worth the paltry economic reward that may be reaped. As one of the best of the best currently intact sagebrush lands in Wyoming, and arguably within the US, it is imperative the BLM provide this area with the highest level of protections administratively available. We contend this can best be achieved with an ACEC designation and corresponding management prescriptions as proposed within the original nomination and included with this document in Appendix A. Our recommendations for management allocations generally align with those specific to mineral leasing, energy development, and travel and transportation within ACECs as outlined in Alternative 3.[26] These management allocations provide for the best opportunity at maintaining and enhancing the relevance and importance values of the Little Sandy ACEC by creating the most opportunity for halting sagebrush habitat loss and greater sage-grouse decline.

Designating the Red Desert ACEC to Protect Wyoming's Red Desert Sage-Grouse

In December of 2022, the proposed Red Desert ACEC was collaboratively nominated by the Wyoming Wilderness Association, Audubon Rockies, the Conservation Lands Foundation, the Indigenous Land Alliance of Wyoming, the National Audubon Society, the Sierra Club Wyoming Chapter, The Wilderness Society and Wyoming Outdoor Council. The Red Desert ACEC nomination is based on a detailed, in-depth scientific landscape-level quantitative analysis conducted by Conservation Science Partners (attached) that explicitly demonstrates how the nominated area meets the importance, relevance and special management attention requirements for designation as outlined in BLM Manual 1613.[27]

The proposed Red Desert ACEC represents approximately 150,000 acres of some of the finest intact high-elevation sagebrush steppe in the contiguous United States. If protected, the area would stitch together a matrix of badlands, buttes and rolling sagebrush terrain unfurled across currently unprotected lands within a patchwork of adjacent designated Wilderness Study Areas (WSAs), Lands with Wilderness Characteristics (LWCs), and other ACECs. If protected, it could preserve existing ecological connectivity amongst these intact wildlands, turning a patchwork of protected lands into a contiguous network totaling upwards of 600,000 acres. This would preserve ecological connectivity not only for sage-grouse, but also for other charismatic species that are integral for the health and function of these wildlands on which greater sage-grouse depend.[28] Doing so would be in line with recent guidance from BLM IM 2023-13 and the recently implemented Conservation and Landscape Health Rule, both of which direct the BLM to "evaluate whether relevant values contribute to landscape intactness, climate resilience or opportunities for conservation or restoration" when considering the designation of an ACEC.[29] While this area does not contain a high density of sage-grouse, the Department of the Interior's recent 2022 Sagebrush Conservation Design Report indicates over one third of the area included within the proposed Red Desert ACEC is considered to be a core sagebrush area (CSA) with the remaining area identified as a growth opportunity area (GOA).[30]

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25. *See e.g.* Surdam Consulting, Inc. Evaluation for the Potential for Significant Oil and Gas Discoveries in the Big Sandy Foothills and Northern Red Desert, Wyoming. July 2020. *See also,* Rock Springs Field Office RMP DEIS Vol 1, Map 3-12: Wind Energy
26. DEIS for Greater Sage-Grouse Rangewide Planning, Vol 1, Chapter 2.5.2, Table 2-14.
27. Conservation Science Partners. 2022. A landscape-level assessment of Area of Critical Environmental Concern (ACEC) criteria in the proposed Red Desert ACEC. Technical Report. Truckee, CA, USA. Attachment
28 Conservation Science Partners. 2022. A landscape-level assessment of Area of Critical Environmental Concern (ACEC) criteria in the proposed Little Sandy Landscape ACEC. Technical Report. Truckee, CA, USA. Attachment
29. BLM IM 2023-13 Clarification and Interim Guidance for Consideration of ACEC Designations in Resource Management Plans and Amendments. November 30, 2022. *See also 89 FR 40308.* 43 CFR Parts 1600 and 6100 Conservation and Landscape Health § 1610.7–2(d)
30. Doherty, K., et al. A sagebrush conservation design to proactively restore America's sagebrush biome: U.S. Geological Survey Open-File Report 2022–1081, 38p., https://doi.org/10.3133/ofr20221081.

Protecting the region as an ACEC would support the DOI's sagebrush conservation strategy to defend the core, grow the core as it would prevent further degradation to the CSA and could direct management attention, funding, and partnership opportunities to restore the adjacent GOA.[31] As noted above, protecting the integrity of core sagebrush areas and restoring growth opportunity areas has resulted in positive population trends among greater sage-grouse.[32] Furthermore, the area has been identified as possessing high ecological resilience in the face of climate change, indicating the area may become increasingly important as a climate refugia for sage-grouse and other sagebrush-obligates as the climate warms.[33] It is for these reasons that the area is included within National Audubon Society's Red Desert Globally Important Bird Area "which provides important breeding, foraging, nesting, wintering, or migratory stop-over habitat for sagebrush obligate species including the greater sage-grouse (Centrocercus urophasianus), sage thrasher (Oreoscoptes montanus), and sage sparrow (Artemisiospiza nevadensis)" as well as migratory bird species taking advantage of ephemeral lakes and reservoirs within this landscape.[34] Important Bird Areas are identified using a robust, standardized and internationally agreed set of criteria. As such the area has significance to the surrounding lands and beyond and is therefore greater than locally significant. While we recognize the analysis of relevance and importance criteria for ACECs under this DEIS are specific to greater sage-grouse, we believe this interpretation of criteria is too myopic.[35] Factors contributing to the health of the greater landscape that support sage-grouse should be of equal importance; without the sagebrush ecosystem, greater-sage grouse will continue to decline. The BLM's own criteria outlined in the DEIS refer to habitat persistence, habitat disturbance, and habitat quality as part of the relevance and importance criteria as well as genetic connectivity.[36] If the BLM takes a more expansive view of habitat to include that which is important to all of the species that are integral to health of the sagebrush ecosystem as a whole and consider habitat connectivity in addition to sage-grouse genetic connectivity, then the Red Desert ACEC more than meets the relevance and importance criteria for ACEC designation.

BLM IM 2023-13 also directs the BLM to consider whether an area has "substantial significance to Tribes…in a way that may support Tribal co-stewardship or traditional or customary uses."[37] As noted above in regards to the Little Sandy ACEC, the greater Red Desert has been a sacred landscape for thousands of years to more than 49 Tribes with ancestral and maintained ties to this unique region. Many of these Tribes have inherent sovereign or reserved treaty rights for the Red Desert area. Because the nominated area holds known traditional, cultural, spiritual, and archaeological resources of significance, the BLM should work in cooperation with all connected Tribal nations to identify and protect the Traditional Ecological Knowledge and cultural values of the area. This includes considering the area as a candidate for collaborative management with Tribal nations utilizing a co-stewardship framework as can be achieved with an ACEC designation.

As with the entirety of the sagebrush biome, this area faces a multitude of threats including, but not limited to, increasing drought and wildfires, climate change, invasion of invasive species etc. that render it more vulnerable to degradation. Unfortunately, it is also adjacent to ongoing nearby mineral and resource development which would degrade these sensitive lands beyond repair, further highlighting the need for special management attention to protect these values and resources. Similar to our arguments above for the Little Sandy ACEC, should the BLM continue forward with Alternative 5

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31. Doherty, K., et al. A sagebrush conservation design to proactively restore America's sagebrush biome: U.S. Geological Survey Open-File Report 2022–1081, 38p., https://doi.org/10.3133/ofr20221081.
32. Id.
33. Conservation Science Partners. 2022. A landscape-level assessment of Area of Critical Environmental Concern (ACEC) criteria in the proposed Red Desert ACEC. Technical Report. Truckee, CA, USA. Attachment
34. Id.
35. DEIS for Greater Sage-Grouse Rangewide Planning, Vol 1, Chapter 2.5.12 and Vol 3. Appendix 5.4
36.Id.
37. BLM IM 2023-13, November 30, 2022.

and choose not to designate the Red Desert ACEC with conservation-oriented management prescriptions, this area will see undue and irreparable degradation. The DEIS delineates the bulk of the Red Desert ACEC area as a General Habitat Management Area (GHMA) with limited protections.[38] For instance, one of the major threats to the area includes encroachment of nearby fluid mineral leasing, in spite of reports indicating the area has very low to moderate oil and gas development potential.[39] Under the preferred Alternative 5 for GHMA in Wyoming. fluid mineral leasing activities are allowed within 0.25 miles of occupied lek sites. As with PHMA discussed above, these lek site buffers are based on outdated research, and the 0.25 mile proposed lek buffers fall woefully short of the 3.0 mile and 4.7 mile NSO buffers recommended by current research to sustain healthy sage-grouse populations and avoid nest abandonment and other negative impacts.[40] As such, GHMA prescriptions under Alternative 5 do not provide adequate habitat protections for functioning populations of greater sage-grouse. Again, tying fluid mineral development to lek site locations ignores the impacts these activities have on the rest of the surrounding sagebrush ecosystem, the vitality of which, as described previously, is essential for thriving sage-grouse populations.

As demonstrated above the area contained within the proposed Red Desert ACEC more than meets the relevance and importance criteria as well as the need for special management attention required for ACEC designation. The Red Desert proposed ACEC is yet another of the best of the best sagebrush landscapes worthy of ACEC designation with corresponding management prescriptions as proposed within the original nomination. As with the Little Sandy ACEC, our recommendations for management prescriptions generally align with those specific to ACECs outlined in Alternative 3.[41] These management allocations provide for the best opportunity at maintaining and enhancing the relevance and importance values of the Red Desert ACEC by creating the most opportunity for halting sagebrush habitat loss and greater sage-grouse decline.

In Closing

Many lands within the sagebrush biome have been degraded by both human and natural causes. Wyoming boasts nearly 40% of the world's greater sage-grouse population largely due to the high level of intactness of Wyoming's sagebrush landscapes.[42] However, the constant and increasing demand from industry, recreation, and encroaching urbanization coupled with the impacts of a changing climate render these remaining wildlands vulnerable to the same degradation occurring elsewhere. The BLM has a rare opportunity to protect existing habitat connectivity, intactness and integrity within the greater Red Desert landscape by designating the Little Sandy and Red Desert ACECs and closing them to industrial development and curbing recreational impacts. ACECs with strong, enforceable management allocations provide equitable, holistic, ecosystem focused management beyond what is proposed in the preferred alternative, a management framework that is imperative if the sagebrush biome, and subsequently, greater sage-grouse are to continue to not only function but flourish. Furthermore, recent direction under the Conservation and Landscape Health Rule indicates that if a proposed ACEC is found to meet all three management criteria as defined in BLM Manual 1613 and BLM IM 2023-13, it will be designated in the resulting resource management plan or amendment.[43] The final plan amendment therefore should include

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38. DEIS for Greater Sage-Grouse Rangewide Planning, Vol 2. Appendix 1, Map 2.5
39. *See e.g*. Surdam Consulting, Inc. Evaluation for the Potential for Significant Oil and Gas Discoveries in the Big Sandy Foothills and Northern Red Desert, Wyoming. July 2020.
40. DEIS for Greater Sage-Grouse Rangewide Planning, Vol 1. Chapter 2.5.2, Table 2-4. *See also* Coates, P.S., et al. 2013. Evaluating Greater Sage-Grouse seasonal space use relative to leks: Implications for surface use designations in sagebrush ecosystems: Journal of Wildlife Management 77:1598–1609. *See also* Knick, S. T. and S. E. Hanser. 2011. Connecting patt
41. DEIS for Greater Sage-Grouse Rangewide Planning, Vol 1. Chapter 2.5.2, Table 2-14
42. Doherty, K., J.D. Tack, J.S. Evans, and D.E. Naugle. 2010. Mapping breeding densities of greater sage-grouse: a tool for range-wide conservation planning. BLM Completion Report: Interagency Agreement # L10PG00911. Bureau of Land Management. 29pp.
43. 89 FR 40308. 43 CFR Parts 1600 and 6100 Conservation and Landscape Health § 1610.7–2(j)

all ACECs found to meet the three designation criteria. For the Northern Red Desert area, the DEIS found the Little Sandy ACEC to meet all three criteria and thus, under new direction from the Conservation and Landscape Health Rule, the Little Sandy ACEC should be designated in the final plan amendment. As demonstrated above and in the attached CSP report, the Red Desert ACEC also meets all three criteria and should also be designated in the final plan amendment.

We commend the BLM for considering ACECs as an appropriate and valuable management tool within Alternatives 3 and 6. We appreciate the willingness of the BLM to consider utilizing this important tool for robust, durable management of special landscapes in the West. The BLM's hard work in drafting the amendment alternatives is evident throughout the DEIS. We appreciate the opportunity to provide meaningful input and hope our comments are helpful. We look forward to future engagement.

Respectfully,

Lauren Marsh
BLM Program Manager
Wyoming Wilderness Association
lauren@wildwyo.org
205.807.4783

Sarah Walker
Policy Coordinator
Wyoming Wilderness Association
swalker@wildwyo.org
307.672.2751

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Oregon Fish and Wildlife Office
2600 SE 98th Avenue, Suite 100
Portland, Oregon 97266
Phone: (503) 231-6179 FAX: (503) 231-6195

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TS Number: 24-271

Memorandum

To: State Director, Oregon/Washington Bureau of Land Management
Portland, Oregon

From: State Supervisor, Oregon Fish and Wildlife Office
Portland, Oregon

KESSINA LEE Digitally signed by KESSINA LEE
Date: 2024.06.13 13:28:11 -07'00'

Subject: Oregon Fish and Wildlife Office Comments on the Greater-Sage-grouse Draft Resource Management Plan Amendment and Environmental Impact Statement

Thank you for the opportunity to provide comments during the public scoping period regarding alternatives to amend the Bureau of Land Management's (BLM) 2015 Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment (ARMPA). This memorandum serves to provide Oregon-specific comments that are supplemental to comments provided separately by the U.S. Fish and Wildlife Service (Service) that have a range-wide focus.

Collaboration among Oregon's state and federal agencies, private landowners, and other non-government organizations has been and continues to be the signature facet of greater sage-grouse (hereafter, sage-grouse or GRSG) conservation in our state. As the 2015 ARMPA was drafted, Oregon BLM, Oregon Department of Fish and Wildlife (ODFW), U.S. Fish and Wildlife Service (Service), the Sage-grouse Conservation Partnership (SageCon), and other interest groups worked closely to ensure that the ARMPA closely aligned with the Oregon Sage-grouse Action Plan (SageCon 2015) and that the maximum conservation benefit for sage-grouse was achieved. The Service's 2015 conclusion that sage-grouse did not warrant Endangered Species Act (ESA) protections hinged upon this spirit of collaboration, with federal land management plans and Oregon regulations providing **comprehensive protections and regulatory certainty** for sage-grouse habitat and voluntary conservation commitments from landowners to maintain and enhance Oregon's privately-owned rangelands.

That collaborative approach, for which the 2015 ARMPA serves as an integral component, has

garnered significant conservation benefits in Oregon since 2015, as highlighted below:

- New development in Oregon's Priority Areas for Conservation (PACs, synonymous with Oregon Department of Fish and Wildlife [ODFW] Core Areas) has been negligible with no PACs exceeding the 1% decadal disturbance threshold or the overall 3% development cap;

- Oregon has completed over 1,100 conservation projects totaling nearly 1.7 million acres (Conservation Efforts Database; 2015–2023). Projects include, but are not limited to, conifer removal, vegetation management, and habitat enhancement across public and private lands with many projects involving multiple cooperators/partnerships.

- Over 600,000 acres of private rangelands formally enrolled in Endangered Species Act Programmatic Candidate Conservation Agreements with Assurances (CCAAs);

- Oregon's 2015 planning process resulted in enhanced coordination among BLM, Oregon Department of Forestry, and Rangeland Fire Protection Associations to prioritize rapid wildfire response in sage-grouse habitat;

- Analyses of U.S. Geological Survey (USGS) Targeted Annual Warning System (TAWS) data indicate that although the number of sage-grouse neighborhood clusters (population units) signaling "watches" and "warnings" has increased in Oregon since 2014, the rate of these increases is approximately 22% and 24% less than the rest of the range, respectively and 15% and 25% less than the rest of Climate Cluster-E that encompasses the Great Basin region (2015-2023; Coates et al 2022).

Despite this progress, the need to maintain or enhance the protections and regulatory certainty of sage-grouse habitat is as important now as it was in 2015. Range-wide, sage-grouse populations have declined by 65% since the mid-1980s and 41% since the early 2000s and populations continue to decline approximately 3% per year (Prochazka et al. 2024). Sage-grouse in Oregon remain equally, if not more vulnerable as they were during the 2015 planning effort as evidenced by the following:

- 2023 sage-grouse population estimates in Oregon remained among the lowest during the past four decades (1980-2023) and nearly 50% below the 2003 baseline population estimate of 29,327 individuals (ODFW 2023).

- Sage-grouse populations in PACs continue to fall below population and habitat thresholds established in the 2015 ARMPA (BLM 2024). In 2023, ten of 16 PACs (for which triggers can be calculated) had either a "soft" or "hard" population trigger status as of 2023. Notably, six PACs sustained prior "hard population triggers", most of which have been in "hard trigger" status for three or more years. One PAC declined to the extent that it switched from a "soft" to a "hard population trigger"; two additional PACs declined to a "soft population trigger status" for the first time, and one PAC maintained its "soft population trigger" status. Additionally, two PACs have triggered "soft habitat triggers".

- Per the USGS TAWS, as of 2023, two neighborhood lek clusters in Oregon were in "warning" status and two were identified to "watch", meaning these clusters of leks exhibit evidence of aberrant population decline relative to the rest of the Great Basin (Climate Cluster-E). Neighborhood clusters in warning status signal the need for management intervention aimed at stabilizing populations and those in watch status are recommended for more intensive monitoring (Prochazka et al. 2024).

- With the exception of the small, isolated populations of sage-grouse in Washington, Oregon's rangelands represent the northwestern edge of the species range and thus is more vulnerable to loss of populations (Aldridge et al. 2008, Prochazka et al. 2024). In fact, two neighborhood clusters encompassed by Oregon are predicted to have an extirpation probability greater than 50% within the next two population oscillations (average oscillation duration is 9.2 years). Within the next four population oscillations (approximately 37 years), this increases to four neighborhood clusters and within the next 55 years (6 population oscillations), six neighborhood clusters are predicted to have >50% extirpation probability (Prochazka et al. 2024).

- The USGS' Genetic Warning System (GWS) indicates that there are a minimum of two neighborhood clusters in Oregon that are identified to "watch" due to low allelic richness (it should be noted that fewer than half of the neighborhood clusters in Oregon had genetic data for GWS analyses; Zimmerman et al. 2023). These neighborhood clusters were identified as high priority for management actions to stabilize populations and genetic diversity by promoting dispersal, habitat connectivity, and population growth. Genetic diversity of sage-grouse within neighborhood clusters was most commonly below GWS thresholds in the periphery of the species range. Because Oregon's sage-grouse habitat is located on the edge of the range, maintaining genetic diversity is critical to ensure Oregon's sage-grouse population trend stabilizes.

The Service recognizes that one of the identified purposes of the 2024 Greater-Sage-grouse Draft Resource Management Plan Amendment and Environmental Impact Statement (DEIS) is to "provide consistent conservation across state lines", however development pressures and sage-grouse population abundance and trends vary in each state and regulations should not be uniformly applied. With the exception of major rights-of-way (ROWs), the situation where proposed development spans state lines rarely occurs in Oregon, thus negating the need for reducing Oregon's current conservation standards and regulations to match those of other states. The DEIS fails to provide support that these adjustments are necessary given the lack of current and projected future development pressure that would extend beyond Oregon's boundary.

An Oregon-specific Record of Decision (ROD) should also reflect Oregon's unique sage-grouse population concerns as stated above and that Oregon's sage-grouse habitat represents the periphery of the species' range. Oregon's sage-grouse populations are more vulnerable than those in the core of sage-grouse range and locally-adapted range-edge populations may be critical for species persistence under different future climate conditions (Aldridge et al. 2008, Rehm et al. 2015, Prochazka et al. 2024). Thus, maintaining or expanding sage-grouse habitat protections is critical to prevent further range contraction not only within Oregon, but for the species overall.

Chapter 4 of the DEIS summarizes known impacts to sage-grouse populations resulting from anthropogenic activities. Yet, the BLM's preferred alternative (Alternative 5) proposes to ease regulatory barriers to development within sage-grouse habitat and would contribute to reduced habitat carrying capacity because impacts could occur before compensatory mitigation is completed. In Oregon, we're concerned that the proposed management under Alternative 5 does not comport with the DEIS' stated goal "to conserve, enhance, restore, and manage GRSG habitats to support persistent, healthy populations" and the BLM has failed to substantiate why facilitating more allowable disturbance is justifiable given ongoing range-wide and Oregon sage-grouse declines.

The preferred alternative in the DEIS offers multiple opportunities for local decision makers to grant exceptions to habitat protections which could result in a larger disturbance footprint within the areas most critical for Oregon's sage-grouse. This approach does not create durable habitat protections for sage-grouse. Rather it leaves the door open to subjective interpretation as new development pressures could make development in critical sage-grouse habitat financially attractive despite the mitigation burden required by the state.

The Service's goal is to ensure that the pace and scale of conservation in Oregon since 2015 continues. To that end, we have identified elements of the alternatives proposed in the March 2024 DEIS that will maintain or enhance the conservation standard afforded in the 2015 ARMPA. We have coordinated with ODFW to recommend these elements are adopted in the Oregon-specific ROD. We have organized our comments below by topic and have underlined text that clearly details our recommendations for the Oregon-specific ROD.

1. Habitat designations

Sagebrush Focal Areas (SFAs) were designated in the 2015 ARMPA based on the Service's recommendation to "further protect sage-grouse population centers that have been identified in the scientific literature as critically important for the species" (USFWS 2015), and included added protections that would further limit new, human-caused surface disturbance in SFAs. In Oregon, SFAs offered enhanced protection to nearly 2 million acres of sage-grouse habitat by excluding them from solar and wind energy development, and surface occupancy related to fluid mineral leasing. Importantly, these areas were also proposed for withdrawal from location and entry of new mining claims, thereby "ensuring that these important populations are conserved into the future" (USFWS 2015). At the time of the 2015 listing decision, the long-term conservative management of SFAs was considered particularly important given uncertainty about economic or technological advances that could pose future risk to these critical sage-grouse populations most important for the long-term conservation of the species. SFAs were also intended to be prioritized for management to benefit sage-grouse, including wild horse and burro gathers, grazing permit modifications (as deemed necessary), rangeland health assessments, fire management projects, and sagebrush restoration. "Ensuring these areas are analyzed first provides certainty that, if degraded habitat conditions occur in the most important areas for the species, management actions will be taken, and possible restoration will occur" (USFWS 2015). Because SFAs were developed to be "important conservation units within which land managers will apply the most conservative strategies to protect sage-grouse and habitat" (USFWS 2015), they contributed

significantly to the 2015 not-warranted decision. The Service strongly recommends that the Oregon state-specific ROD retains SFA designations.

We appreciate that the BLM has worked with ODFW to incorporate new 2023 Core Areas as Priority Habitat Management Areas (PHMA) in Oregon. However, we are concerned with the language in Appendix 3, Section 3.5 which states that "Oregon BLM anticipates using the final ODFW habitat designation maps to the *maximum extent possible*" in the Final EIS. We recommend that the 2023 Core Areas are adopted in their entirety to facilitate coordinated conservation and mitigation.

Our review of the BLM's geographic information system (GIS) files representing proposed General Habitat Management Areas (GHMA) for each alternative indicated that portions of ODFW's 2023 Low Density habitat are not included as GHMA. We recommend merging the BLM's GHMA with ODFW's 2023 Low Density habitat to ensure that all of ODFW's Low Density habitat is also classified as GHMA. We recognize that the BLM's process for mapping GHMA includes additional areas that are not mapped as Low Density habitat; however, merging the layers will achieve the greatest consistency in habitat management and application of Oregon laws regulating development and mitigation in designated sage-grouse habitat.

In Table 2-4 of the DEIS, the section pertaining to "criteria-based management" in areas verified to be non-habitat within PHMA and GHMA is unclear (p. 2-19 – 2-20). For Alternatives 4 and 5, the text implies that areas identified as non-habitat within PHMA and GHMA are not subject to other management direction within the RMP if the project will not have direct or indirect impacts to adjacent habitat, potential habitat, or sage-grouse as a result of project design and required design features (RDFs). The Service cautions that development in non-habitat areas within or surrounded by PHMA and GHMA may have indirect impacts to adjacent land even with application of RDFs and encourages exclusion and avoidance management directives to be applied in a manner consistent with state's mitigation policy.

2. Lek Definitions

We encourage the Oregon BLM to maintain its alignment with ODFW lek definitions, as is currently the case with the 2015 ARMPA. Potential discrepancies between use of Western Association of Fish and Wildlife Agencies (WAFWA) definition of "active" lek[1] and ODFW terminology (used in the 2015 ARMPA) could cause confusion during plan implementation and could inadvertently render important leks (as defined by ODFW) vulnerable to future development. Per ODFW, "occupied" and "pending" leks receive equal conservation status[2].

[1] The WAFWA definition of an "active" lek is one which has at least *two* males counted in *two out of the past 10 years* and does not consider the status of lek complexes.

[2] Per ODFW, "occupied" means a lek that has been regularly visited (≥ 5 of past 7 years) by ODFW and has had *one or more* male sage-grouse counted in *one or more of the last seven years*. "Unoccupied" leks are those that have been counted each of the past 7 years with no males counted or if no males have been counted over the course of the past 7 counts (no matter how much time is between those counts). "Pending" leks are those that do not meet the definition of occupied or unoccupied. These leks have been counted ≤ 5 of the past 7 years, but one of the past 7 counts between 1980 and present recorded at least one male sage-grouse.

Specifically, ODFW has identified important occupied and pending leks that do not meet the WAFWA definition. This discrepancy is in part due to Oregon's unique lek dynamics that may differ from other western states, in that several small neighboring leks may be closely associated with birds attending any or all during a given breeding season. For this reason, Oregon groups closely associated leks (generally leks within 0.5 mi of each other) into "lek complexes" and then evaluates the annual lek status (occupied, pending, or unoccupied) based on the maximum male count at the complex scale. For example, if there is at least one lek in the complex that meets the definition of occupied, this lek complex is considered occupied.

Alignment with ODFW's lek conservation status definitions is also critical because they are codified in Oregon statute and Oregon regulations (OAR 660-023-0115) prioritize the protection of leks classified by ODFW as "occupied" or "pending" from development. We suggest the Oregon BLM's state-specific ROD maintains the current alignment with state lek terminology to ensure the management is focused on the State's highest priority leks.

3. Mitigation

Oregon's 2015 ARMPA planning process made an effort to be closely aligned with the state's sage-grouse mitigation administrative rules. This coordination was highlighted in the Service's 2015 listing decision: "…the Oregon Plan includes a State-administered compensatory mitigation program designed to synchronize with BLM mitigation processes... Many of the Oregon Plan measures are similar or complementary to those included in the Federal Plans. This aligned framework of tools, rules, and protocols across local, State, and Federal processes will ensure that coordinated mitigation and voluntary actions conserve the species across all land ownerships in Oregon. It also creates the transparency and credibility necessary for public support of the State's strategy" (USFWS 2015). In 2019, the BLM entered into a Memorandum of Agreement (MOA) with ODFW that codified its commitment to comply with the State's compensatory mitigation program, employ the net conservation gain objective, and "ensure consistency with State law, policy and programs by incorporating and enforcing that State-directed compensatory mitigation as a condition of permits or authorizations issued by BLM OR/WA".

The BLM's preferred alternative represents a decoupling from the state's mitigation rules that could make it overly challenging to implement because it would create two sets of mitigation standards that developers would have to meet. Specifically, the mitigation approach for Alternatives 3, 4, and 5 represents a departure from the 2015 ARMPA's "net conservation gain" policy, as well as the State of Oregon's sage-grouse mitigation policy. The DEIS reduces the conservation standard to "no net loss". The Service appreciates that Alternatives 4 and 5 include the provision that compensatory mitigation will meet the requirements of the state. In Oregon, this means compensatory mitigation must achieve a net conservation gain. We recommend aligning the mitigation expectation such that "net conservation gain" is incorporated into Oregon's state-specific ROD to establish consistency with Oregon administrative rules and maintain the existing conservation standard.

Under Alternatives 3, 4, 5, and 6 of the DEIS, BLM notes, "where restoration is not possible, preservation can be used to offset impacts and should be designed to protect uniquely

important habitats or areas of GRSG habitats that are at a high risk of conversion". While preservation should be a component of compensatory mitigation (to ensure mitigation durability), we caution that preservation alone may not meet the BLM's no net loss goal and mitigation should be strategically designed to fully restore functional habitats or enhance habitats "...to the degree where carrying capacity (i.e., number of GRSG supported before disturbance) is increased to the point of offsetting the loss in capacity of the areas impacted." To be consistent with Oregon sage-grouse mitigation policy, and the BLM's stated "no-net loss" goals of compensatory mitigation, we recommend that Oregon's state-specific ROD does not allow habitat preservation alone to cover compensatory mitigation debits.

The Service also recommends that the Oregon ROD is explicit that mitigation will be applied to both third-party and BLM initiated actions. This is conveyed differently in the text of Section 2.5.3 and Table 2-5, which could create confusion during plan implementation.

The Service requests a specific discussion of how the BLM plans to address the 1872 Mining Law and mitigation. The Service recognizes the 1872 Mining Law contains no environmental provisions, but 1) Federal land users must also comply with State requirements, when applicable, and 2) mineral exploration and development are subject to State and Federal environmental regulations, including State mitigation policies and/or Executive Orders that require mitigation to offset the impacts of mining activities on sage-grouse. Contrary to BLM's comment that compensatory mitigation cannot be required under the 1872 Mining Law, BLM's mitigation policy, including from Section 7.5. Operations Authorized by the Mining Law of 1872 states, "The BLM should apply this mitigation policy on a case-by-case basis, consistent with the BLM's authority under the Mining Law, when authorizing operations under 43 CFR subparts 3809 or 3715." The Service recommends that the Oregon ROD does in fact require compensatory mitigation for operations authorized under mining law. These activities have the potential to have a large disturbance footprint and extensive indirect impacts. Compensatory mitigation for habitat loss and degradation resulting from mining will be imperative to achieve the stated goal to "conserve and manage GRSG habitat to support persistent, healthy populations..." and to comply with Oregon's sage-grouse mitigation policy.

The Service appreciates that per Alternatives 3-6, "Compensatory mitigation should be completed prior to initiating the activity causing the need for compensation and monitored for retention and efficacy." However, this statement conflicts with other sections of the DEIS that allow development to occur as long as compensatory mitigation is planned. For example, per Alternative 5, the No Surface Occupancy stipulation in PHMA associated with fluid mineral development can be excepted based on a plan to implement compensatory mitigation (discussed further in the Fluid Mineral Leasing section below). To ensure the highest conservation standard, the Service encourages the Oregon BLM to maintain the requirement that compensatory mitigation is completed prior to initiating habitat disturbances.

4. Disturbance Cap

During the 2015 planning process, development and implementation of a disturbance cap for Oregon's PHMA was closely coordinated between the Oregon BLM and state agencies to ensure consistency and the optimum conservation benefit. As a result of this coordination,

the 2015 ARMPA and Oregon Administrative Rule (OAR) 660-023-0115 both apply a 3% disturbance cap within each PAC (also referred to as ODFW Core Areas/PHMA), plus a decadal disturbance cap (no more than 1% increase per decade). In December 2023, ODFW adopted new sage-grouse habitat maps and delineated new Core Areas (PAC boundaries) which will result in a new value for the acres in the denominator of the disturbance cap calculation. Alternatives 3, 4 and 5 would use a significantly different value for the denominator because it proposes to calculate the disturbance cap within priority habitat within Fine-Scale Habitat Assessment Framework (HAF) boundaries (Figure 1). HAF boundaries in some cases encompass multiple 2023 PACs (Core Areas), thus applying a 3% cap to these larger geographies would allow a larger development footprint to occur in sage-grouse habitat and thus reduce the conservation benefits afforded in the existing, coordinated approach. Also, applying two different disturbance cap measurements will likely add confusion to calculations and prospective developers in Oregon's rangelands. The Service recommends the Oregon BLM ensure that the 3% development cap denominator mirrors how they are described in Oregon's regulations.

The Service appreciates that Alternatives 4 and 5 include additional forms of anthropogenic disturbance that are not currently considered in the 2015 ARMPA and recommends those additional categories of disturbance are included in the Oregon-specific ROD.

However, both Alternative 4 and 5 provide opportunities for exceptions to the disturbance cap which would weaken the regulatory certainty that the existing conservation standard will apply. In addition to the No Surface Occupancy (NSO) exceptions discussed in the Mitigation section above (and Fluid Mineral Leasing section below), Alternative 4 would allow exceptions to the disturbance cap if it can be demonstrated that the mitigation hierarchy has been applied and Alternative 5 would allow projects that would result in impacts exceeding the 3% disturbance cap threshold so long as compensatory mitigation is *planned*. Consideration of the mitigation hierarchy obfuscates the main concern which is that additional development (no matter how the project is sited or the minimization measures employed to reduce project impacts) will further fragment the habitat unit and negatively impact sage-grouse. Compensatory mitigation will not ameliorate the habitat fragmentation and sage-grouse behavioral response to additional development above the 3% threshold, given sage-grouse philopatry and that habitat avoidance, changes in habitat use, and increased mortality risk (from predators and other sources) may have compounding negative effects on sage-grouse populations. Given the uncertainty of habitat restoration, it is not acceptable to consider the acres of impact sufficiently mitigated until the restoration has been realized and deemed effective. This could take decades, all the while fragmented sage-grouse habitat will experience reduced carrying capacity by project impacts. This could cause irreversible local sage-grouse populations declines. The lag time in realizing compensatory mitigation cannot be offset by simply adding acres to the compensatory mitigation requirement. The Service encourages the Oregon BLM to disallow exceptions to the NSO stipulation and any further development in areas that have exceeded the 3% disturbance cap, until it can be shown that disturbance within the specified geography is reduced below 3%. The Service recommends that exceptions to the disturbance cap are not included in Oregon-specific ROD. Doing so will also ensure that the BLM plan aligns with the State of Oregon's sage-grouse mitigation administrative rules.

The 2015 ARMPA had a density cap of an average of 1 energy and mining facility per 640 acres and a decadal disturbance cap not to exceed 1% increase per decade within Priority Areas for Conservation (PACs). The Service recommends these approaches are explicitly maintained in the Oregon-specific ROD.

5. Adaptive Management

Adaptive management is a key component of the DEIS and adaptive management responses by Federal land management agencies were an essential component in the 2015 not-warranted conclusion by the Service. Currently, adaptive management thresholds are based on two key metrics: population status and habitat availability. USGS researchers have developed a Targeted Annual Warning System (TAWS) that alerts biologists and managers when local sage-grouse population trends are declining and diverge from regional trends. This is based on the most comprehensive population trend analysis study conducted on sage-grouse. The Service supports the inclusion of the TAWS decision-support tool into BLM's adaptive management analyses for population trends. We believe TAWS will provide a consistent analysis across the range of sage-grouse and will help identify when and where management actions would be most effective for improving sage-grouse populations.

However, use of TAWS alone may not be adequate to identify local populations that warrant management changes. While TAWS was designed to signal when local sage-grouse (neighborhood cluster) *trends* differ from that of the regional sage-grouse (climate cluster), it does not consider the *size* of the local population. As a result, a small population declining at a similar rate to the regional population would not signal a "watch" or "warning". Yet, declines in small local populations are cause for concern given their vulnerability to catastrophic, stochastic events (e.g., fire, West Nile virus outbreaks) and genetic bottlenecking. For example, the populations in the Baker and Picture Rock PACs are extremely small and have been in "hard trigger" status per the current ARMPA adaptive management strategy since 2015 and 2018, respectively. However, the neighborhood clusters overlapping these PACs have not had TAWS "watch" or "warning" signals since 2015 and 2018, respectively. Thus, per the DEIS, these PACs would no longer be classified as having surpassed a hard population threshold. In short, TAWS does not alert managers to populations that may be of concern after significant population drops that subsequently stabilize, but do not rebound.

We appreciate that the DEIS indicates that the state should play a role in identifying population areas of concern and that the "BLM must consider all available information regarding population threshold status" including state wildlife agency population trend analyses. However, the DEIS only explicitly provides for state wildlife agency engagement in the case of when a disputed "watch" or "warning" would reverse a "hard" or "soft trigger." We recommend that the BLM coordinate with the Service, ODFW, and USGS to identify additional ecologically defensible lines of evidence that would be considered to determine if local populations warrant "hard" or "soft trigger" status and formally incorporate these assessments in the state-specific ROD. Examples of additional lines of evidence include but are not limited to: the rate of TAWS "watches" and "warning"; extirpation probability of the neighborhood cluster or leks within; and GWS "watches" and "warnings" (though additional

genetic data for the state would be requisite). For example, the neighborhood cluster corresponding to the Baker PAC (E-102) is in the top 90th percentile for "watches" and top 96th percentile for "warnings", meaning that fewer than 4% of neighborhood clusters range-wide have experienced as many "warnings" as E-102. The median extirpation probability for all leks within neighborhood cluster E-102 is 69% within two population oscillations and this neighborhood cluster is also in genetic "watch" status per the GWS (Prochazka et al. 2024). These lines of evidence all signal that this neighborhood cluster warrants special management consideration. Similar analyses should be conducted for all of Oregon's neighborhood clusters.

Per Oregon's 2015 ARMPA, a hard trigger was "tripped" if the management area had experienced both a soft habitat and soft population trigger. The Service recommends continued incorporation of this scenario (combination of habitat and population declines) in the Oregon-specific ROD. Although soft triggers have lower thresholds than hard triggers, the combination of a habitat and population soft trigger could represent a significant concern worthy of a more immediate and elevated adaptive management response.

Alternatives 3-6 state that population triggers can be reversed if "there are sufficient numbers of GRSG (abundance) to allow for recovery of population numbers to those present at or before the threshold was met, based on local growth rates determined by the state wildlife management agency, and BLM has the concurrence of the state wildlife management agency". Within the clause, the term "sufficient" is undefined, subjective, and does not outline any applicable scientific methods. We recommend this language is not included in the Oregon-specific ROD. Additionally, given population oscillations, instances could occur when a sage-grouse population may increase above its pre-threshold abundance while still overall undergoing a long-term decline.

The DEIS states that Causal Factor Analysis (CFA) teams will include at minimum the local BLM biologist, BLM state sage-grouse lead, and a representative from the state wildlife agency. In the Oregon-specific ROD, the Service requests that inclusion of a Service biologist on CFA teams is also a requirement.

6. Renewable Energy

Alternative 4 in the DEIS represents an increase in the conservation standard in comparison to the 2015 ARMPA as it relates to utility scale wind and solar development. Because all PHMA and GHMA areas within 0.5 mi of PHMA are excluded from renewable energy development, more sage-grouse habitat within Oregon will be protected from this form of development. Additionally, Alternative 4 excludes infrastructure associated with renewable testing and development (e.g., met towers and powerlines) in PHMA and requires avoidance of limited/high value seasonal habitat and movement corridors in GHMA. Because Alternative 4 expands the protections to PHMA from renewable energy development over the 2015 ARMPA, the Service recommends this alternative is adopted in the Oregon-specific ROD. Colorado-specific provisions extend the GHMA exclusion buffer to 2 mi from PHMA; the Service recommends Oregon BLM extends the buffer in GHMA that is adjacent to PHMA to 2 mi given that this is the minimum buffer distance recommended from energy

development and tall structures (Manier et al. 2014). The Service does not recommend Alternative 5 because PHMA would be managed as avoidance rather than exclusion areas for renewable energy and open in GHMA with undefined guidance to "preclude negative impacts to any adjacent PHMA habitats". Alternative 5 would reduce the regulatory certainty and conservation benefits over the existing 2015 ARMPA.

Per Alternatives 4 and 5, the lek buffer distances for tall structures as stated in the 2015 ARMPA require avoiding a 2 mi buffer around leks; lek conservation status is not discussed in Appendix B of the 2015 ARMPA. Because the DEIS has referenced using the WAFWA definition for an "active" lek elsewhere in the document, the Service encourages the Oregon ROD specify that ODFW lek definitions will apply to the lek buffers required for renewable energy development. We appreciate that the DEIS includes the provision for use of local data that may suggest the need for a larger buffer. However, more current data indicates that sage-grouse are sensitive to tall structures up to 15 km (Gibson et al., 2018; Webster et al., in review). Thus, we encourage the Oregon-ROD to reference the best available science to update lek buffers.

7. Locatable Minerals

The Service is concerned that current BLM policy and regulations may not be adequate to ensure the protection of sage-grouse and its habitat in conjunction with locatable mineral activity. Because SFAs conferred a high degree of protections for the most important landscapes for sage-grouse, the BLM's commitment to SFA management as described in the 2015 ARMPA contributed to the Service's confidence in 2015 that ESA listing was not-warranted. Specifically, the 2015 Plans proposed that the Secretary of the Interior exercise their authority under section 204 of the Federal Land Policy and Management Act (FLPMA) to safeguard SFAs by withdrawing them from location and entry under the 1872 Mining Law, subject to valid existing rights. Consistent with the recommendations iterated within our 2015 not-warranted finding, the Service supports elevated protections within SFAs, particularly in those areas identified as having medium or high potential for mineral resources.

At the time of the 2015 finding, there was little comprehensive information available about potential mineral development in important sage-grouse habitats. However, since that time, the U.S. Geological Survey (USGS) updated data regarding the mineral potential within SFAs. This assessment of critical mineral deposits presents important new information about the threat of locatable mineral development that was not available at the time of the 2015 finding. The SFAs are predominantly federally managed and contain existing high-quality sagebrush habitat for sage-grouse that support high breeding densities of sage-grouse. As such, SFAs are essential to conservation and persistence of the species and federal management must prioritize habitat availability and connectivity and prevent habitat fragmentation and degradation within them. To meet the purpose and need of the Final EIS to protect sage-grouse and its habitat from adverse effects of locatable mineral exploration and mining, the Service recommends the Oregon-specific ROD retains SFAs and withdrawals these critical areas from the Mining Law of 1872.

8. Fluid Mineral Management

The DEIS proposes changes to the management objective for fluid mineral development and leasing. While Alternative 4 offers more details of how to evaluate new potential fluid mineral projects, Alternatives 4 and 5 may result in less protections of sage-grouse habitat because they instruct the BLM to apply the mitigation hierarchy to fluid mineral development "to the extent practicable". This provides less regulatory certainty than the stated objective in the 2015 ARMPA: "Priority will be given to leasing and development of fluid mineral resources, including geothermal, outside of PHMA and GHMA. When analyzing leasing and authorizing development of fluid mineral resources, including geothermal, in PHMA and GHMA, and subject to applicable stipulations for the conservation of Greater Sage-grouse, priority will be given to development in non-habitat areas first and then in the least suitable habitat for Greater Sage-grouse." The Service recommends that the Oregon ROD reflects management objectives that afford the highest conservation standard. Alternatives 4 & 5 use the WAFWA definition of an "active" lek as the basis for applying different criteria for allowing exemptions and/or waivers to the NSO stipulation within PHMA and GHMA. As discussed above, use of the WAFWA definition will not protect all important leks as identified by ODFW definitions. The Service recommends the Oregon BLM retains usage of ODFW lek conservation status definitions.

In the Service's 2015 listing decision, we recognized that NSO is "the most restrictive designation that allows for development of resources and protects habitat" (USFWS 2015). Per the 2015 ARMPA, Sagebrush Focal Areas were closed to surface occupancy for leased and unleased fluid minerals with no waiver, modification, or exception and PHMA was open to fluid mineral leasing subject to NSO without waiver or modification and with limited exception. Alternative 3 offers an enhanced conservation benefit over the 2015 ARMPA by closing all PHMA to fluid mineral development and would be acceptable to the Service. The Service does not recommend selection of either Alternative 4 or 5 because these alternatives not only provide additional opportunities for exemptions to the NSO stipulation, but also waivers and modifications, and thus there is less regulatory certainty that sage-grouse habitat will be protected.

In Alternatives 4 & 5, exceptions to the NSO stipulation in PHMA may be granted if it can be demonstrated that the mitigation hierarchy will be applied. However, while the mitigation hierarchy is important, the primary step of avoidance can be subjectively interpreted and opens the possibility for further habitat fragmentation and impacts to sage-grouse, while NSO unambiguously eliminates impacts from surface occupancy. If avoidance is subjectively deemed impossible, the minimization and compensatory mitigation steps of the hierarchy may still result in a negative sage-grouse behavioral response to the additional development, unlike NSO which would definitively preclude harmful impacts associated with surface occupancy. The exception in Alternative 5 is even less acceptable than as stated in Alternative 4 because NSO exceptions may be granted prior to completion of compensatory mitigation and before mitigation becomes functional habitat. Habitat restoration in sagebrush ecosystems is complex, often resulting in ongoing investments to achieve functional habitat. To allow habitat degradation prior to establishing functional compensatory habitat could have a deleterious impact on local sage-grouse populations such that they may not be able to

survive or rebound. The Service recommends that the mitigation-justified exceptions to the NSO stipulation in PHMA are not incorporated into the Oregon-specific ROD.

The Service agrees, as stated in Alternatives 4 & 5, that it is appropriate that the BLM does not consider exceptions to the NSO stipulation in PHMA if an adaptive management threshold has been exceeded for the sage-grouse population neighborhood cluster in which the development is proposed and if the CFA concludes that development associated with the type of activity seeking exception is or could contribute to the threshold exceedance. However, even if the CFA is inconclusive on cause, allowing additional development in a neighborhood cluster that has "tripped a trigger" will be harmful to sage-grouse trends within the cluster, thus the Service recommends that the Oregon ROD stipulates that no exceptions will be allowed in neighborhood clusters that have "tripped triggers".

Alternatives 4 & 5 also weaken the collaboration among BLM, FWS, and State biologists to determine the appropriateness of granting exceptions to NSO in PHMA. In the 2015 ARMPA, a unanimous finding among the federal and state agencies was necessary to grant an exception. No language to that effect is included in Alternatives 4 & 5; rather waivers, exclusions and modifications (WEMs) could be determined by the Authorizing Officer and not require higher review or collaborative input from FWS or ODFW. The Service recommends retaining the high standard of requiring a unanimous decision among federal and state agencies to grant an exception to NSO in PHMA.

With respect to GHMA, the Service appreciates that Alternatives 4 and 5 offer additional guidance on factors to consider when granting exceptions to the NSO stipulation within 1 mi of leks (but see previously stated concerns about use of the WAFWA lek definition). However, these alternatives remove the requirement to coordinate with ODFW in making the determination to grant an exception. The Service recommends that the Oregon ROD includes the coordination provision that exists in the 2015 ARMPA. Alternatives 4 and 5 add a new opportunity to offer exemptions based compensatory mitigation. As stated above, allowing compensatory mitigation to serve as exemption criteria represents a lower conservation standard than what currently exists under the 2015 ARMPA. The Service recommends that the Oregon state-specific ROD does not include this exemption flexibility. The 2015 ARMPA does not allow any modifications to the NSO stipulation within 1 mi of leks; however, Alternatives 4 and 5 would, thus these alternatives lower the existing conservation standard. The Service recommends the Oregon ROD maintains the 2015 ARMPA standard disallowing modifications. Per Alternatives 4 and 5, waivers to the NSO within 1 mi of leks could be granted if a lek is no longer considered active per WAFWA's lek definitions. As stated above, use of WAFWA's lek definitions is not recommended; rather the Service requests that the BLM retain usage of ODFW's lek conservation status determinations. Furthermore, this change is unnecessary because ODFW updates lek conservation statuses annually. The Service recommends disregarding any proposed changes to the criteria for approving waivers to the NSO within 1 mi of leks.

9. Saleable Mineral Materials

In the 2015 ARMPA, SFAs were closed to saleable mineral materials. However, per

Alternatives 4 and 5, no areas would be identified or managed as SFAs. Eliminating SFA management stipulations represents a reduction in the conservation benefit achieved under the 2015 ARMPA. As stated above, the Service strongly recommends maintaining SFAs in Oregon's ROD and the management directive to close SFAs to saleable mineral materials. Alternatives 4 and 5 could allow the expansion of an existing, authorized saleable mineral material site in PHMA without requiring mitigation to compensate for this added disturbance. This represents a condition that allows further degradation in sage-grouse habitat without application of the mitigation hierarchy to compensate for habitat losses. With respect to saleable mineral materials, Alternatives 4 and 5 represent a reduction in the conservation standard afforded in the 2015 ARMPA; the Service recommends not incorporating the changes outlined in Alternatives 4 and 5 into the Oregon-specific ROD.

10. Right of Ways (ROWs)

Alternative 4 maintains the 2015 ARMPA's approach to avoid major Rights of Way (ROWs) in PHMA, but also adds protections by excluding major ROWs from high-value seasonal habitats (unless certain criteria can be met); these additional protections are not included in Alternative 5. Alternative 4 is also superior because it requires implementation of minimization measures and micro-siting to reduce impacts and applies the disturbance cap even if major ROWs are located inside a designated corridor. Because Alternative 4 provides a greater conservation standard in comparison to the 2015 ARMPA and Alternative 5, the Service is supportive of the Oregon-ROD adopting the enhanced PHMA protections from major ROW development included in Alternative 4. However, we encourage the Oregon BLM to stipulate a 1.2 mi exclusion buffer around occupied leks (ODFW definition) in PHMA. When co-locating major ROWs with existing disturbance, the Service recommends applying density cap management directions included in the 2015 ARMPA and using the most currently and best available science to apply appropriate buffers to limit indirect impacts into adjacent high valuable habitat.

With respect to GHMA, the 2015 ARMPA required avoidance for major ROWs. Alternative 4 is less restrictive because it only requires avoidance within a subset of GHMA (breeding and nesting habitat, other limited seasonal habitat, and/or areas within 0.5 mi of PHMA). Alternative 5 represents a lesser conservation standard by classifying GHMA as open to major ROWs. Thus, the original conservation standard established in the 2015 ARMPA is preferable, and the Service recommends maintaining this the 2015 ARMPA protections in the Oregon-specific ROD. However, we recommend that the Oregon BLM excludes major ROWs in GHMA within 1.2 mi of occupied leks (ODFW definition) and breeding and nesting habitat, other limited seasonal habitat, and/or areas within 0.5 mi of PHMA.

With respect to minor ROWs, the 2015 ARMPA stipulated that PHMA should be avoided. To offer additional protections above the 2015 ARMPA the Service recommends the Oregon ROD adopt similar minor ROW management as proposed for Montana and the Dakotas in Alternative 4, specifically exclusion of minor ROWs within 1.2 mi of occupied leks (ODFW definition) and critical winter range, and then avoided in designated corridors in those areas and in the remainder of PHMA. The 2015 ARMPA stipulated GHMA was open to minor ROWs. We recommend the Oregon ROD adopts Alternative 4 with respect to minor ROWs

in GHMA because it provides a higher conservation standard by requiring new minor ROWs avoid breeding, nesting, or other valuable seasonal habitat, though we encourage the BLM to apply a 1.2 mi avoidance buffer around occupied leks (ODFW definition).

11. Predator Management

The Service appreciates the DEIS' more direct approach to managing predation on BLM-managed lands and additional direction and clarity about how BLM may support predator management, including implementing control actions.

Alternative 5 does not require project proponents to develop a predator management plan; rather this is optional per the Administrative Officer's discretion. Given that arguably all new anthropogenic infrastructure could provide subsidies to predators, we recommend that the Oregon ROD includes the predator management plan requirement for all new development as is presented in Alternative 4. Alternative 4 is also preferable over Alternative 5 because it requires project proponents to install and maintain nest/perch deterrents. Regular maintenance of deterrents is essential, as well as monitoring for their efficacy and modifying them if predators become habituated to them; thus, the Service recommends the Oregon ROD applies Alternative 4. However, Alternative 4 states that where it is not possible to avoid new anthropogenic infrastructure, it should be placed outside of areas of "undisturbed habitat". The Service recommends the term "undisturbed habitat" be sufficiently defined in the Oregon ROD so it is not subjectively evaluated.

12. Livestock Grazing

The Service recognizes that improper grazing is a threat to the conservation of sage-grouse, while proper grazing management is compatible with conserving sage-grouse habitat and, in some situations, may support or benefit habitat management. The Service appreciates that the livestock grazing management objective (Objective RM-1) as stated in Alternative 4 has a broader conservation approach than the objectives included in the 2015 ARMPA in that it maintains the intent to manage livestock to meet or make progress towards Land Heath Standards (LHS) and restoring or enhancing habitats for sage-grouse, but also takes into consideration avoiding impacts from range improvements. The Service recommends the Oregon ROD adopts Alternative 4 rather than Alternative 5, because Alternative 5 does not include the objective of avoiding impacts to sage-grouse resulting from range improvements.

Appendix 15 states: "In GRSG habitat management areas, these communication efforts should include coordination on how livestock grazing practices could be managed across both BLM-administered lands and non-BLM-administered lands, in partnership with interested permittees and lessees, to improve GRSG habitat conditions." The Greater Sage-grouse Programmatic Candidate Conservation Agreement (CCA) for Rangeland Management Practices on Bureau of Land Management Lands in Oregon provides an excellent mechanism for accomplishing this goal. When CCAs are completed for permitted grazing on federal lands in conjunction with CCAAs for private lands, there is a greater opportunity for assessing a permittee's entire livestock operation. Taking a wholistic approach ensures that reducing threats to sage-grouse on both private and BLM-managed

lands can occur with the highest degree of coordination. We encourage the Oregon BLM to reinvigorate their coordination with permittees, especially those enrolled in CCAAs for their deeded lands, and the Service to increase enrollment in the BLM CCA program.

Alternatives 4 and 5 limit flexibility in addressing situations when LHS are not being met and existing grazing is not a significant causal factor. Although grazing may not be a significant causal factor for LHS being unmet, changes to grazing management may be an important part of the solution to make progress toward achieving LHS. We recommend consideration of the option to adjust grazing management, in coordination with permittees, even when grazing is not identified as a causal factor, when changes to grazing management would have a benefit to LHS.

Per the 2015 ARMPA, thresholds and responses are required to be included in all NEPA analyses for all renewals and modifications of livestock grazing permit/leases in SFA and PHMA. Alternatives 4 and 5 reduce the areas and situations when this requirement would be applicable, thus to maintain the existing conservation standard, the Service recommends that the Oregon ROD retains this directive as described in the 2015 ARMPA. While including thresholds and responses in at least one alternative for NEPA analyses for grazing authorizations in PHMA is a good initial step, thresholds and responses may not ultimately be selected in the final alternative. To provide transparency and predictability to permittees, and given the benefits of being able to address resource concerns in a timely manner by having NEPA-analyzed thresholds and responses in grazing permits, we recommend these are routinely incorporated into grazing permits, particularly in PHMA.

Under Alternatives 4 and 5, the DEIS makes explicit reference to the ability of BLM to consider the creation of reserve common allotments following voluntary permit relinquishment. The Service supports this provision, as a lack of reserve forage areas (i.e., grass banks) has been identified as a current limitation to large-scale implementation of restoration efforts and the ability to adaptively manage in response to drought.

Per the 2015 ARMPA, tall structures associated with grazing were required to be at least 1.2 miles away from occupied leks (See Appendix C, Required Design Features and Best Management Practices). As stated in Appendix 15 of the DEIS, this required design feature (RDF) no longer has specific lek avoidance buffers for tall grazing infrastructure. This represents a downgrade in the conservation benefits afforded by the 2015 ARMPA and we recommend retaining the 1.2 mi lek buffer in the Oregon-specific ROD. Additionally, care was taken to ensure the Best Management Practices (BMPs) and RDFs in the 2015 ARMPA mirrored conservation measures in Oregon's Programmatic Sage-grouse CCAA and CCA on BLM lands. We recommend consistency among the livestock grazing management best practices implemented on private and BLM-managed lands. Please cross-reference Appendix 15 with Oregon CCA/As and/or develop a set of RDFs/BMPs specific to Oregon. Should new scientific information indicate that the BMPs/RDFs should be updated, the Service would be willing to work with Oregon BLM to ensure that conservation measures in the Oregon ROD are updated in the CCA/As.

13. Wild Horse and Burro Management

Alternative 4 provides better regulatory protection to sage-grouse habitat, than the 2015 ARMPA, or Alternatives 5 or 6, because it specifies that wild horses and burros (WHB) should be managed to the low end of appropriate management levels (AML). Given that horse populations can double in 5 years, Alternative 4 would provide better WHB population management and increase the chances of achieving and maintaining sage-grouse habitat objectives. The Service recommends the BLM dedicates and prioritizes more resources (funding, staff time, etc.) to keep herd management areas (HMAs) within sage-grouse habitat at the low-end of AML. Currently, many of Oregon's HMAs in sage-grouse significantly above AML. As noted in Section 2.5.11 of the DEIS, sage-grouse populations are negatively impacted by wild horses when herds exceed established AML in HMAs (Coates et al., 2021). The Service recommends the Oregon ROD incorporates this aspect of Alternative 4 with respect to WHB management, while incorporating the language from Alternative 3 that specifies, "No new wild horse and burro herd management areas would be designated in areas that overlap with PHMA."

14. Areas of Critical Environmental Concern

Designating Areas of Critical Environmental Concern (ACECs) for sage-grouse is consistent with the Service's conservation priority for the species. The Service has the following concerns about Oregon BLM's decision to not nominate areas: 1) the manner in which the "relevance" and "importance" criteria was applied appears to be inconsistent given the vast discrepancies in the acreages proposed for ACECs in different states; 2) proposed ACEC nominations in adjacent states arbitrarily stop at the Oregon border, which does not reflect the biological reality of connectivity of sage-grouse populations and habitat nor consider vulnerability of Oregon's populations given that they are on the periphery of the species range; 3) the process for designating proposed ACECs was not transparent and did not involve all state and/or local agencies/stakeholders, nor was it coordinated among state/local stakeholders across state boundaries; and 4) the small areas that are currently designated as ACECs in Oregon do not provide a substitute for the nearly 2 million acres that were designated as Sagebrush Focal Areas in Oregon.

The Service would be interested in participating in discussions with the Oregon BLM, ODFW, and interested partners, to discuss the potential for nominating additional ACECs, though we note that the Service supports use of proposed ACES for *properly* managed livestock grazing.

However, if Oregon BLM ends up not including SFAs or our recommendations for PHMA management in the state-specific ROD, the Service suggests ACECs could be an appropriate mechanism to replace the extra protections afforded to sage-grouse from SFAs and the 2015 ARMPA regulatory assurances associated with PHMA.

15. Key Research Natural Areas

The Service recognizes that Research Natural Areas (RNAs) were designated to manage a

variety of resources of scientific interest for the purposes of research and education. While excluding livestock grazing from RNAs may be appropriate for achieving the goals of the RNA program, we limit the scope of our comments to impacts to sage-grouse. The Service recognizes that properly managed livestock grazing is generally compatible with sustaining sage-grouse habitat and populations. This position is also supported by the Oregon Sage-Grouse Action Plan (Sage-Grouse Conservation Partnership 2015). The Service maintains that frequent monitoring of rangeland health and flexible grazing permits with built-in adaptive management thresholds and responses are critical to assuring that: 1) livestock grazing is appropriate on a site-specific basis; and 2) grazing can be adjusted in a timely manner in response to resource concerns, including drought. We appreciate the detail provided in Appendix 17 that analyzes the current grazing pressure and access within key RNAs as moderated by terrain and other natural features, potential risk posed to sage-grouse by installing new fence to exclude grazing, and potential conflicts fencing would pose with designated Wilderness Study Areas (WSAs) or cultural resources.

The boundaries of Lake Ridge, North Ridge Bully Creek, and South Ridge Bully Creek RNAs overlap with high fence collision risk areas. The boundaries of the Guano Creek-Sink Lakes, Foley Lake, South Bull Canyon, Toppin Creek, and Rahilliy-Gravelly overlap with low, or medium fence collision risk. Because some RNAs are proposed to be entirely or partially excluded from grazing, it assumed that perimeter and/or cross-fencing will be required. We appreciate the cost/benefit analyses in Appendix 17 that consider if benefits from excluding these areas from grazing warrant the installation of fences in high-risk collision areas, particularly given that new fencing in RNAs contradicts proposed Management Action RM-6 (included with Alternatives 4 and 5) to avoid new fencing within high-risk areas. The Draft EIS proposal includes consideration of virtual fencing opportunities, and the Service recommends exploring this option.

In closing, we wish to highlight again that Oregon's habitat protections and regulations that have been in place since 2015 have resulted in notable conservation outcomes and may be slowing sage-grouse population declines in the state. Given the progress that has occurred since the implementation of the 2015 ARMPA, we strongly encourage the Oregon BLM to avoid any management direction in its state-specific Record of Decision that would weaken protections for sage-grouse habitat. Sage-grouse population and habitat declines have been many decades in the making, and given the slow response of the sagebrush ecosystem, it will take many decades to reverse sage-grouse population trends and combat threats to Oregon's rangelands. Thus, maintaining or enhancing conservation efforts through the BLM's current planning process is paramount. We believe it is necessary to incorporate our recommendations described in this letter in order to improve Oregon's sage-grouse population trends and combat threats to Oregon's rangelands. If you have any questions or require any further information regarding these comments, please contact Jackie Cupples in the Service's La Grande Field Office at 541-962-8593 or jacqueline_cupples@fws.gov.

Figures:

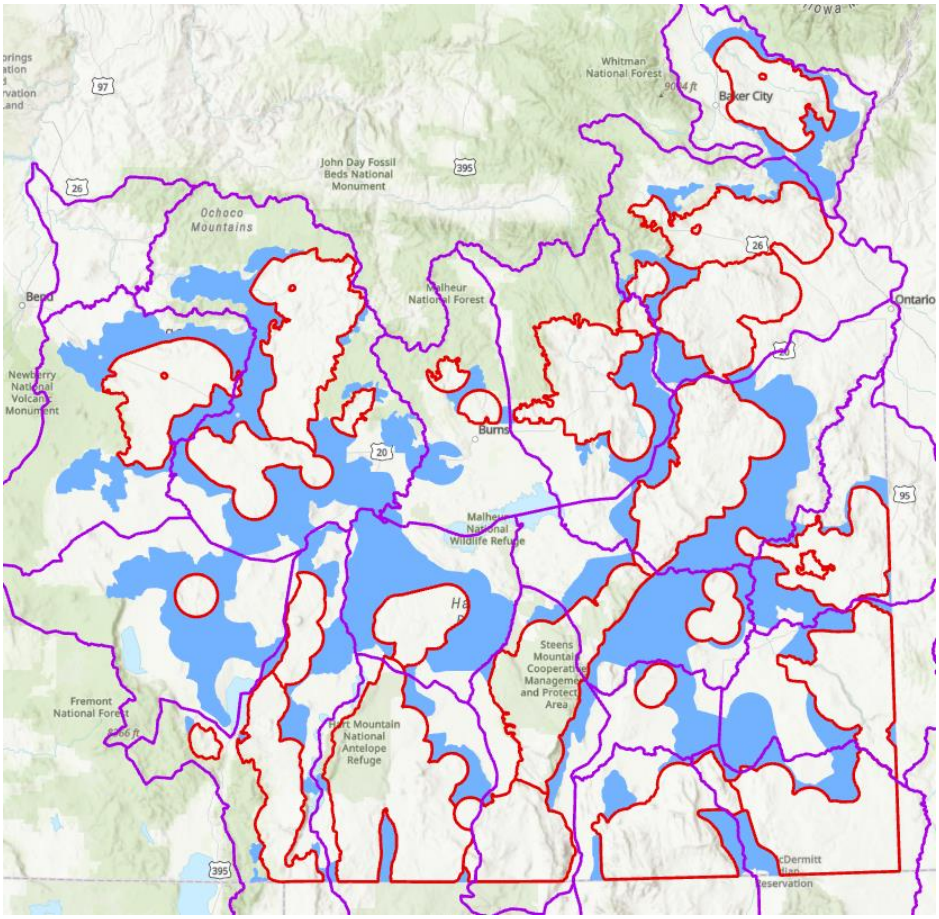

Figure 1. Draft ODFW Core Areas shown in red. Core Areas encompass and subdivide all BLM Priority Habitat in Oregon based on available sage-grouse data. BLM Habitat Assessment Framework Fine Scale boundaries are outlined in purple. Blue polygons represent ODFW low density sage-grouse habitat. Per OAR 660-023-0115, the 3% development cap would apply to each red Core Area individually. Per BLM Alternatives 3, 4, and 5, the 3% development cap would apply to all areas outlined in red that fall within individual purple outlined HAF Fine Scale polygons.

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Laurie L. Carson, Chairman
Janet VanCamp, Vice Chairman
Commissioner Richard Howe
Commissioner Shane Bybee
Commissioner Hank Vogler

Nichole Stephey, Ex-officio Clerk of the Board

1786 Great Basin Blvd., Suite 3
Ely, Nevada 89301
(775) 293-6509
Fax (775) 289-2544

WPClerk@WhitePineCountyNV.Gov

White Pine County
Board of County Commissioners

May 14, 2024

Bureau of Land Management
BLM Utah State Office
Attn: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

Via Email: *BLM_HQ_GRSG_Planning*

RE: White Pine County, Nevada Comments Regarding the Draft Resource Management Plan Amendment and Draft Environmental Impact Statement for Greater Sage-Grouse Areas of Critical Environmental Concern (DOI-BLM-WO-2300-2022-0001-RMP-EIS)

To whom it may concern,

White Pine County, Nevada (County) has served as a Cooperating Agency on the above listed document, attended nearly every Cooperating Agency meeting, provided Cooperating Agency comments, provided scoping comment, and participated in several public hearings for the BLM's Draft Resource Management Plan Amendment and associated Draft Environmental Impact Statement (Draft RMPA/EIS). It is from this experience and engagement that the County offers the below comments specific to the BLM's proposed Areas of Critical Environmental Concern (ACECs). Designation of ACECs without adequate engagement has the potential to greatly and negatively impact the County's customs, culture and economy given the direct nexus between these values and the multiple use management of public lands.

The County participated in the April 16, 2024 Public Meeting in Reno, Nevada as well as the BLM's presentation to the Nevada Sagebrush Ecosystem Council on April 19, 2024. In both presentations, BLM representatives clearly stated that comments related to ACECs would be considered up until the close of the 90-day Draft RMPA comment period on June 13, 2024. Upon its review of the Federal Register Notice, the County identified the following language, "This notice also announces the opening of a 60-day comment period for ACECs. The BLM **must** receive your ACEC-related comments by May 14, 2024" (**emphasis added**). The County finds the BLM's comments and notice to be confusing and contradictory. There is simply too much integration between proposed ACEC designations and the Draft RMPA/EIS to bifurcate the comment period. **As such, the County is requesting a 60-day extension for ACEC comments and a 30-day extension for Draft RMPA/EIS comments (120-days for both). At minimum, the BLM must synchronize the ACEC and Draft RMPA/EIS comment periods through a new Federal Register Notice to eliminate any confusion and ambiguity.**

The County did want to go on record within the 60-day ACEC comment period, as noticed, to state its OPPOSITION to designation of ACEC within the County as part of the Draft RMPA/EIS. The County reserves the right to supplement this comment as part of its overall submission to the Draft RMPA / EIS given the statements made by BLM in multiple public meetings. In summary, the BLM has NOT:

- Justified the need for ACECs;
- Clearly distinguished how the proposed ACECs are more important than any other Sage-grouse habitat within White Pine County; nor,
- Met its own relevance and importance criteria for designating ACECs.

The County would call the BLM's attention to its Cooperating Agency comments on the matter if additional detail were so desired.

The County will continue reviewing the Draft RMP / EIS but is extremely concerned with both the process and the product as relates to proposed ACECs.

Sincerely,

Laurie L. Carson

Laurie L. Carson, Chair
White Pine County Board of Commissioners

CC: Nevada Congressional Delegation
Governor Joe Lombardo
Jon Raby, BLM Nevada State Director
Robbie McAboy, District Manager, Ely District Office BLM
White Pine County Natural Resources Advisory Committee

UTE INDIAN TRIBE
P. O. Box 190
Fort Duchesne, Utah 84026
Phone (435) 722-5141 • Fax (435) 722-5072

April 9, 2024

Bureau of Land Management
Utah State Office
440 West 200 South # 500
Salt Lake City, UT 84101
ATTN: HQ GRSG RMPA
Submitted Via Email https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation to the Bureau of Land Management Regarding the Greater Sage-Grouse Draft Resource Management Plan Amendment/Draft Environmental Impact Statement

To Whom It May Concern:

The Ute Indian Tribe ("Tribe") of the Uintah and Ouray Reservation ("Reservation") provides these comments in response to the Draft Environmental Impact Statement ("DEIS") regarding the Greater Sage-Grouse Draft Resource Management Plan Amendment prepared by the Bureau of Land Management ("BLM") and made available for public comment on March 15, 2024. The Tribe has a significant interest in BLM's management plans related to the Greater Sage-Grouse. Our 4.5 million acre Reservation is the second largest Indian reservation in the United States and includes Greater Sage-Grouse populations and habitat. The Ute Indian Tribe is also a major oil and gas producer. In addition, the BLM manages lands within our Reservation.

The DEIS states that BLM contacted tribes within, or with cultural interests within, the planning area, including twice by letter. *See* DEIS at 5-1. Despite this assertion, the Tribe did not receive correspondence from BLM notifying it of the effort to amend Sage-Grouse management plans and inviting it to participate in government-to-government consultations with BLM and participate as a cooperating agency. The Tribe has repeatedly requested that it be included in BLM's Greater Sage-Grouse management efforts. In 2017, we wrote to former Secretary Ryan Zinke requesting tribal inclusion in such efforts. *See* Ex. 1 (Letter dated August 29, 2017, from Ute Tribal Business Committee Chairman Luke Duncan to Secretary Ryan Zinke.) In November 2017, the Tribe provided comments to BLM about its efforts at that time to amend its resource management plans and once again urged BLM to "support tribal sovereignty in its review of Resource Management Plans related to Greater Sage-Grouse by recognizing, empowering, and collaborating with tribal governments." *See* Ex. 2 at 2 (Comments of the Ute Indian Tribe of the

Uintah and Ouray Reservation: Bureau of Land Management Notice of Intent to Amend Resource Management Plans Relating to Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements or Environmental Assessments (November 8, 2107)). The Tribe further requested that it be included as a cooperating agency pursuant to Council on Environmental Quality ("CEQ") regulations, specifically 40 C.F.R. § 1508.5 that includes Indian tribes in the definition of Cooperating Agencies "when the effects are on a reservation." Ex. 2 at 2. BLM's management of the Sage-Grouse populations and habitats on BLM lands within and near our Reservation will certainly have effects on the Reservation. Thus, the Tribe clearly qualifies as a Cooperating Agency under the CEQ regulations.

The failure to engage in a government-to-government consultation process with the Tribe means that the DEIS is seriously flawed. We urge BLM to engage with the Tribe in a meaningful consultation process that recognizes that the Tribe is a major oil and gas producer that also serves an important role in Greater Sage-Grouse conservation.

To manage our Greater Sage-Grouse populations while also providing for responsible energy development, we enacted and began to implement our own Greater Sage-Grouse Conservation Ordinance in 2013. That Ordinance has been provided to the Fish & Wildlife Service and the Secretary of the Interior, and a copy is attached hereto as Exhibit 3. The Tribe's Greater Sage-Grouse Conservation Ordinance seeks to protect the environment, and the health, safety, and economic welfare of the Tribe and its members. It strikes a responsible balance between the conservation of the Greater Sage-Grouse and its habitat with oil and gas development on our Reservation, which is critical to the economic health and well-being of the Tribe and its members. The Tribe's Ordinance also furthers the common goals of promoting conservation, tribal self-determination and the government-to-government relationship.

The Tribe notes that the DEIS identifies Alternative 5 as BLM's preferred alternative. *See* DEIS at ES-5 and 2-6. According to the DEIS, Alternative 5 seeks to promote multiple uses by balancing Greater Sage-Grouse conservation efforts with other public land uses, including energy development. DEIS at ES-5 and 2-6. It includes options with fewer restrictions on resource uses, more opportunities for compensatory mitigation, including in the granting of major rights-of-way, and more flexibility in granting exceptions for fluid mineral extraction activities. DEIS at ES-5. In these respects, Alternative 5 is consistent with the Tribe's Ordinance.

Through Alternative 5, the DEIS recognizes the need for localized conservation efforts by noting that the "combination of goals, objectives, and management prescriptions may also vary by state to address circumstances that vary between the states." DEIS at ES-5. Just as BLM seeks to manage public lands in a manner that "aligns with state and local plans and policies to the extent possible," DEIS at ES-5, it should also seek to align its management plans with tribal land management goals and policies. As the Tribe has often pointed out, federally recognized tribes like the Ute Indian Tribe have the inherent sovereign authority to manage species on their lands. Tribal authority to manage tribal lands and the wildlife species that inhabit them has been recognized by Secretarial Order No. 3206 addressing tribal rights and the implementation of the Endangered Species Act ("ESA"). Issued by the Secretaries of the Departments of the Interior and Commerce in 1997, Secretarial Order No. 3206 acknowledges the management role of tribes and

instructs the Departments to give deference to tribal conservation and management plans for listed species. Secretarial Order No. 3206 at 5. It further directs that both Departments carry out their responsibilities under the ESA in a manner "that harmonizes the Federal trust responsibility to tribes, tribal sovereignty, and statutory missions of the Departments…." Secretarial Order No. 3206 at 9. In short, BLM's recognition and promotion of inherent tribal authority in the area of Sage-Grouse conservation is not only mandated by Secretarial Order No. 3206 and other applicable law and policy, but it will also help to facilitate innovative and efficient place-based conservation policies that benefit conservation efforts and other multiple uses of tribal lands in a manner that is consistent with BLM's efforts to promote multiple uses of the public lands that it manages.

The Tribe understands that the identification of a preferred alternative does not qualify as a BLM decision to adopt Alternative 5, and that the agency is free to adopt another alternative or to adopt certain elements from the other alternatives. Nonetheless, the Tribe supports BLM's efforts to adopt effective and localized Sage-Grouse conservation plans that promote multiple use and that do not unduly burden the development of domestic energy resources.

In summary, while the Tribe is supportive of the multi-use, flexible approach of BLM's preferred alternative, we remain concerned that BLM has not conducted the necessary consultation with the Tribe and has not, as a result, acknowledged the important role that the Tribe has been fulfilling with regard to Sage-Grouse conservation since it adopted its Greater Sage-Grouse Conservation Ordinance in 2013. We once again request that BLM consult with the Ute Tribe on this important issue. We will contact BLM representatives soon to initiate a consultation process on this important issue.

On Behalf of the Ute Indian Tribe Business Committee:

Julius T. Murray, III
Business Committee Chairman

Attachments

Dr. Chris Wilson
1595 E. 1385 N.
Logan, UT 84341

May 28, 2024

Sage Grouse Planning Team
BLM Utah State Office, ATTN: HQ GRSG RMPA, 440 West 200 South #500, Salt Lake City, UT 84101

Dear BLM:

As a sage grouse hunter and supporter of Backcountry Hunters & Anglers, the voice for our wild public lands, waters, and wildlife, I commend the Bureau of Land Management's (BLM) efforts to improve greater sage-grouse conservation through the Draft Resource Management Plan Amendment. With approximately 67 million acres of sage-grouse habitat managed by the BLM, the final plans adopted by the BLM must both be durable and able to be readily implemented with the necessary staff and resources in order to effectively support sage-grouse conservation on what represents nearly 50% of the bird's total habitat.

With a sage-grouse population decline of 40% since 2002, and 80% since 1965, it is critical that the conservation of these iconic Western birds is strengthened. The steep decline in sage-grouse populations is correlated with the average rate of loss of more than 1.3 million acres of sagebrush lands each year in the United States. In order to address this, it is necessary to integrate new scientific knowledge and respond proactively to the rapidly evolving conditions across Western sagebrush lands. Once implemented, this planning process will strengthen the health of sage-grouse habitat, in addition to providing benefits for other wildlife such as pronghorn and mule deer whose winter range overlaps significantly with sage-grouse core areas.

I urge the BLM to prioritize the following in their final plan amendment:

* Incorporating the latest science on greater sage-grouse populations, which is necessary to inform the selection of habitat areas and apply meaningful adaptive management.

* Ensuring development is balanced with the need for healthy habitat by directing development impacts outside of Priority Habitat Management Areas.

* Keeping the highest quality sagebrush habitat intact, as science shows that the value these areas provide cannot be replaced.

* Requiring that impacts to sagebrush habitat are offset elsewhere through new conservation projects.

I want to thank you for your commitment to collaborative work with stakeholders across the West that is so critical to ensuring long term conservation for sage-grouse and their habitat on our public lands.

Sincerely,

J. Christopher Wilson

Dr. Chris Wilson

Chris Wilson
1595 E. 1385 N.
Logan, UT 84341

SALT LAKE CITY UT 840
29 MAY 2024 PM 4 L

Sage Grouse Planning Team
BLM Utah State Office
440 West 200 South #500
Salt Lake City UT 84101

84101-143425

Chad Hughes
3060 S Stonebriar Dr.
Waxahachie, TX 75165

May 31, 2024

Sage Grouse Planning Team
BLM Utah State Office, ATTN: HQ GRSG RMPA, 440 West 200 South #500, Salt Lake City, UT 84101

Dear BLM:

As a supporter of Backcountry Hunters & Anglers, the voice for our wild public lands, waters, and wildlife, I commend the Bureau of Land Management's (BLM) efforts to improve greater sage-grouse conservation through the Draft Resource Management Plan Amendment. With approximately 67 million acres of sage-grouse habitat managed by the BLM, the final plans adopted by the BLM must both be durable and able to be readily implemented with the necessary staff and resources in order to effectively support sage-grouse conservation on what represents nearly 50% of the bird's total habitat.

With a sage-grouse population decline of 40% since 2002, and 80% since 1965, it is critical that the conservation of these iconic Western birds is strengthened. The steep decline in sage-grouse populations is correlated with the average rate of loss of more than 1.3 million acres of sagebrush lands each year in the United States. In order to address this, it is necessary to integrate new scientific knowledge and respond proactively to the rapidly evolving conditions across Western sagebrush lands. Once implemented, this planning process will strengthen the health of sage-grouse habitat, in addition to providing benefits for other wildlife such as pronghorn and mule deer whose winter range overlaps significantly with sage-grouse core areas.

I urge the BLM to prioritize the following in their final plan amendment:

* Incorporating the latest science on greater sage-grouse populations, which is necessary to inform the selection of habitat areas and apply meaningful adaptive management.

* Ensuring development is balanced with the need for healthy habitat by directing development impacts outside of Priority Habitat Management Areas.

* Keeping the highest quality sagebrush habitat intact, as science shows that the value these areas provide cannot be replaced.

* Requiring that impacts to sagebrush habitat are offset elsewhere through new conservation projects.

I want to thank you for your commitment to collaborative work with stakeholders across the West that is so critical to ensuring long term conservation for sage-grouse and their habitat on our public lands.

Sincerely,

Chad Hughes

Chad Hughes
201 Cambridge St.
Waxahachie, TX 75165

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JUN 04 2024

Sage Grouse Planning Team
BLM Utah State Office
ATTN: HQ - GRSG Rm PA
440 West 200 South #500
Salt Lake City, UT 84101

Received
JUN 11 2024
Bureau of Land Mgmt UTSO

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State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Department of Natural Resources

JOEL FERRY
Executive Director

Public Lands Policy Coordinating Office

REDGE B. JOHNSON
Director

June 12, 2024

Submitted electronically: https://eplanning.blm.gov/eplanning-ui/project/2016719/510 and BLM_HQ_GRSG_Planning@blm.gov

Greg Sheehan
Utah State Director
Bureau of Land Management
Utah State Office
440 West 200 South, Suite 500
Salt Lake City, UT 84101

RE: **Greater Sage-Grouse Rangewide Planning Draft RMP and EIS**

Dear Director Sheehan:

The State of Utah ("State"), through the Public Lands Coordinating Office, in coordination with the Utah Division of Wildlife Resources ("DWR"), has reviewed the Bureau of Land Management's ("BLM") Draft Resource Management Plan Amendment ("DRMP") and Draft Environmental Impact Statement ("DEIS") for greater sage-grouse and provides the following general and specific comments regarding the same:

General Comments/Concerns:

In addition to the more specific concerns outlined below, the State has several general comments/concerns regarding the DRMP and DEIS. First, the State agrees with the BLM that a balanced approach is critical here and supports the BLM's identification of Alternative 5 as the "preferred alternative" because it provides the best balance of the proposed alternatives. Conversely, Alternative 3 provides the least balanced approach and is not a reasonable alternative for consideration moving forward. For instance, and as discussed in more detail below, the removal of fluid mineral leasing and livestock grazing under Alternative 3 is inconsistent with BLM's multiple use mandate, inconsistent with state and county resource management plans, and contrary to the State's Conservation Plan for Greater Sage Grouse.

Second, the State is concerned about the length and complexity of the DRMP. The language simply needs to be more concise to ensure effective application of management throughout the range. The comments below outline multiple areas where confusion remains regarding the implementation of management procedures and this confusion is driven, in part, by the length of the DRMP. Third, the State provided comments on May 14, 2024, outlining its

reasoning for objecting to the designation of ACECs under any alternative. As discussed in that letter, such designations are unnecessary and inconsistent with state and local resource management plans. The State incorporates those comments herein by reference and provides further discussion of ACECs in the specific comments below.

Fourth, the State is concerned about the BLM's approach to adaptive management in the DRMP. The State raised many of these concerns in comments associated with the Administrative Draft EIS. However, there are still general and specific concerns regarding that language. Generally, the State is concerned about the capacity of the BLM to conduct increased causal factor analyses associated with this plan in a timely fashion to ensure management restrictions are specific and targeted. The efficiency and capacity of the causal factor analysis teams should be addressed in this plan. Clear guidelines and templates should also be included in an appendix for both full and initial causal factor analyses to increase efficiency. Additionally, the DWR recommends that clarifying statements be added to any mention of the Targeted Annual Warning System ("TAWS") procedures. Though the TAWS is a valuable tool on a rangewide scale, local populations should continue to be evaluated annually by the state and evaluations shared with the BLM.

Additionally, the State is specifically concerned about the method by which BLM intends to apply restrictions in the event of an inconclusive causal factor analysis (CFA). As drafted, an inconclusive causal factor analysis could result in management prescriptions that last indefinitely. More troubling still, there is significant discretion afforded local BLM officials for management prescriptions associated with an inconclusive CFA. The State does not support regulatory action without supporting evidence as currently suggested in the inconclusive CFA language. Instead, the State suggests continued monitoring and periodic re-evaluation for inconclusive CFAs. The State previously provided suggested language to address this issue. However, in the event the BLM does not adopt that suggested language, the State asks that the BLM reconsider its approach to inconclusive CFAs and allow for monitoring and re-evaluation in place of discretionary restrictions.

Fifth, the State has several concerns about the BLM's approach to predator management. First, the State wants to ensure that the BLM will continue to collaborate with appropriate state agencies, other landowners, federal agencies (e.g., USFWS, APHIS), and tribal governments in their efforts to minimize impacts from predators on sage grouse. Those efforts should be allowed to continue unimpeded, with deference to state management. Second, each of the alternatives allows for potential management *in the event* ravens are identified as an issue. However, it would be far more efficient and effective to proactively develop a comprehensive plan for predator control throughout the range, with assurances and deference to each agency already involved (DWR, FWS, APHIS, FS, BLM, etc.). This should include a cooperating agreement with all involved agencies (including APHIS, USFWS, Department of Agriculture, BLM, Forest Service, and state wildlife agencies) to ensure the involvement of all interested agencies and minimize delay in implementation. Requiring individual response plans in each instance of decline will result in significant delays in implementation, to the detriment of affected sage-grouse. For additional information regarding the effects of ravens on sage grouse, see Human–Wildlife Interactions | Vol 15 | Iss 3 (usu.edu).

DWR has also expressed general comments/concerns regarding the DEIS. First, the State appreciates the BLM's acknowledgment of the DWR's management authority over wildlife and sage grouse in particular. The Utah legislature has statutorily provided DWR management authority over wildlife and its parts. *See* Utah Code Title 23A. Additionally, states' authority to manage wildlife within their borders derives from the 10th Amendment of the Constitution of the United States. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or the people." Furthermore, under the Property Clause, Courts have traditionally interpreted wildlife management as under the states' authority unless otherwise affirmatively stated by Congress. *See Kleppe v. New Mexico*, 426 U.S. 529 (1976). *See also*, *Wyoming v. United States*, 279 F.3d 1215, 1226-27 (10th Cir. 2002). The legal authority outlined by Congress for the BLM does not provide BLM wildlife management authority on lands managed by the BLM.

Second, administrative access for the use of helicopters, OHVs, and other tools for wildlife and habitat monitoring, collaring, and surveys is essential for the DWR to manage wildlife and should be identified in the plan. Relatedly, vegetation and habitat management to support GRSG and their habitats are extremely important to the DWR. Utah's Watershed Restoration Initiative (WRI) is a partnership-based program in Utah that collaboratively enhances and improves watersheds through habitat restoration projects. All alternatives where wildlife habitat is referenced, including vegetation, should include coordination with the DWR and use the WRI partnership alongside BLM and other partners where applicable.

Third, the plan defines an "Authorized Officer" (AO) as an employee of the BLM to whom authority has been delegated to perform the duties described. The State recommends collaboration with the local DWR biologist, either in the definition or as an addition to statements where the "Authorized Officer" is referenced. Similarly, "adjacent" or "near" is used throughout the plan to avoid negative impacts within PHMA or other critical habitats. The State recommends that "adjacent" and "near" be defined or the addition of a qualifying statement such as "BLM and DWR wildlife biologists will determine a distance corresponding to 'adjacent' and 'near' on a case-by-case."

Fourth, if the BLM is implementing HAF models and/or principles to locate areas best suited for mitigation and to quantify the efficacy of mitigation tactics, the DWR would prefer a collaborative effort with our biologists to verify the habitat disturbance, habitat suitability, and the potential success of proposed mitigation efforts. The DWR would prefer phrasing such as "The metrics identified in the HAF and verified by the DWR should be used to determine if restoration actions provide GRSG habitat." Additionally, to the extent mitigation is required under the Resource Management Plan, including any potential mitigation related to the mitigation and restoration leases contemplated under the BLM's new Public Lands Rule, the State requests express recognition that the State is best equipped to hold and manage those leases. This is particularly true for the DWR as it relates to wildlife within the State's control, like sage grouse. However, this is also true for mitigation or restoration leases related to habitat improvement projects conducted through the State's conservation districts for range management improvement.

Fifth, the DWR recommends that the plan provide guidance on non-habitat within PHMA and GHMA. This must include ground-truthing verification by the GRSG BLM biologist and a local DWR biologist in addition to utilizing the Habitat Assessment Framework ("HAF"). There should also be a systematic approach to determining non-habitat within PHMA and GHMA to avoid unnecessary delays in project planning/development, but non-habitat findings should also recognize buffers associated with noise avoidance/minimization/mitigation. For example, if the non-habitat is within a noise buffer of a PHMA, lek, or nesting area (as depicted in Appendix 2), noise restrictions should be implemented during the planning process to account for disturbance that may occur at a distance from non-habitat.

Finally, future water development for wildlife and recreation may require a State water right before project implementation could occur. The applicant needs to coordinate with the Division of Water Rights to ensure compliance with water rights as the applicant addresses potential impacts on GRSG habitat.

Specific Comments:

Page ES-3: "While the states have similar concepts in their RMPs (e.g., disturbance cap, adaptive management, livestock grazing, threats ~~on~~ **of** predation), the detail on application varies."

Page ES-4: ES.4.3 – Alternative 3: The summary of Alternative 3 suggests that the BLM would designate ACECs but maintain the same allocations as the remainder of the PHMA. Accordingly, there would be no differentiation between ACEC management and PHMA management. This is inconsistent with the designation of ACECs, which can only be designated to the extent the resources contained therein require "special management." If management is the same for both ACEC and PHMA, there is no need for an additional ACEC designation and the State requests removal of ACEC consideration for habitat that does not require "special management."

Page ES-6: Resource Uses: The BLM should not make a blanket reference to an inverse relationship between livestock grazing and impacts on GRSG. While some of the other uses mentioned in this paragraph may qualify for this "inverse relationship," there is new science demonstrating that appropriately managed livestock grazing can have positive effects on sage-grouse. At minimum, therefore, the "inverse relationship" referenced here should be revised to allow for the positive effects of livestock grazing.

Page ES-7: "Although the adverse economic impacts under Alternative 3 are likely to be concentrated in mineral extraction and livestock production sectors, reduced economic activity in public land-dependent sectors will have a ripple effect which causes economic activity in other sectors of the economy **to** slow."

Page ES-8: "Restrictions on O&G development under Alts 2, 4, 5, and 6 could have a large negative impact on economic and fiscal conditions in ~~some~~ **many** Western ~~Colorado~~ counties, which may affect social conditions and quality of life in some affected communities."

Page 1-1: "These planning and implementation-level habitat projects show that successful conservation of GRSG requires a shared vision among Tribes, states, **counties,** private citizens, landowners and federal land management agencies."

Page 1-3: "The quantity and quality of available habitat, as well as non-habitat factors such as disruptive activities **[such as wildfire], invasive annual grasses, predation,** and prolonged drought can affect the size and trend of GRSG populations."

Page 1-3: "If a ~~triggers~~ **trigger** was met, the plans stated management changes may be appropriate."

Page 1-4: "Additional descriptions ~~on~~ **of** GRSG population and habitat are presented in Chapter 3."

Page 1-4: "The BLM considers this new information and relevant science from our previous **planning documents** in developing and analyzing proposed management on BLM administered lands."

Page 1-10: "This included prioritization of suppression efforts to limit loss of GRSG habitat, guidance for suppression efforts, the need for proactive efforts such as fuel breaks and fuel reduction projects, and considerations and commitments associated with reclamation and restoration after wildland fires in GRSG habitat management areas." **The document should reference the BLM's attempt to do programmatic analysis of fuel breaks and the results of the litigation that followed: see https://wildfiretoday.com/2021/01/15/environmental-groups-sue-blm-over-plans-to-construct-11000-miles-of-fuel-breaks/**

Page 1-10: "Decision-makers and the public need to understand the impacts each **of the** alternatives would have on specific resources and resource uses."

Page 1-13, Section 1.2.2: The State notes the significance of BLM's recognition that habitat loss associated with anthropogenic disturbance is less than one percent throughout the range, which is "less than what scientific literature has identified as the threshold where GRSG abandon leks." This information must be highlighted for consideration in BLM's alternatives analysis, particularly as it relates to disturbance cap implementation but also as it more generally relates to the ability to include development on the landscape without significant effect on lek attendance.

Page 1-11, Section 1.6.3: The second to last sentence on this page is incomplete.

Page 1-13, Section 1.8: The last sentence of the first full paragraph discusses some states' concerns over adaptive management and suggests those states either prefer Alternatives 1 and 2 or prefer the BLM defer "any population threshold entirely to the state wildlife management agency with no identified metric used to monitor habitat concerns through population trends." For its part, Utah has expressed concern in the cooperating agency process regarding the need for deference to state-controlled population metrics. Despite these concerns, however, Utah is not asking the BLM to forego the use of "identified metrics" in that process. Instead, the State is

asking for a collaborative approach to adaptive management, wherein the BLM does not apply management restrictions until after it has engaged the State in a review of the population metrics relied upon by the BLM. Stated differently, the State requests that a "population threshold" based on BLM's metrics be used as a starting point for a larger conversation of both the accuracy of the threshold and the need for any potential management changes. This conversation must occur *before* the imposition of management restrictions.

Page 2-2: "Alternative 3 includes the greatest measures to protect and preserve GRSG ~~and its~~ habitat." **This statement may not be true, given that grazing would not be permitted. Proper grazing may reduce fuel loads and the risk of wildfire, which is a major reason for the loss of GRSG habitat. If Alternative 3 does not allow for active vegetation management, the Alternative may produce unintended consequences not only relating to wildland fire severity, but also to the encroachment of undesirable vegetation. Additionally, this proposed language amendment [which should be made to similar statements throughout the plan] recognizes the role of the BLM in managing habitat while the states manage the species.**

Page 2-2: "Alternative 5 considers other potential alignments of habitat management areas and associated management to try and balance GRSG conservation with public land uses." **The state agrees that a balanced approach is critical here. Alternative 5 provides the best balance of the proposed alternatives. Alternative 3 provides the least balanced approach.**

Page 2-6: "However, ~~the~~ many of the alternatives considered in detail address differing levels of management constraints within GRSG habitat and their associated effects on public land uses."

Page 2-16, Table 2-4: There is confusion as to the summary of Alternatives 5 and 6. They reference back to Alternative 4, which merely states a withdrawal applicable to Montana. Need clarification as to what management will actually take place.

Page 2-18, Table 2-4: The State is concerned about the inclusion of coal "unsuitability evaluations" in GHMA. It appears the "unsuitability evaluations" will be limited to "essential habitat." However, the vast majority of "essential habitat" within the State is included within PHMA. Thus, although the practical effect of this language is unclear, it must be clarified by either removing GHMA from consideration altogether or specifying where the "essential habitat" determinations will be made. Additionally, noise restrictions should be considered in the "unsuitability evaluations" in areas close to PHMA, as outlined in Appendix 2.

Page 2-19, Table 2-4: The State is generally concerned that implementation of the non-habitat language will be inefficient and unworkable. Utah had language in prior plans regarding non-habitat determinations, but those determinations did not occur in a timely fashion, and it was unclear whether local BLM could move forward with a non-habitat determination without amendments to the RMP and/or the associated mapping. The State makes a general recommendation that BLM include clearer direction on the timeline for completing a non-habitat determination. Finally, the State requests direct involvement in the development of best management practices or implementation-level planning to ensure non-habitat determinations can be made efficiently and effectively.

Page 2-20, Table 2-4, Alternatives 4, 5, and 6: This section states, "...indirect impact consideration also includes: no direct or indirect impacts (considering impacts within distances described in applicable research)..." but this does not explicitly mention the impact of noise. Because noise travels beyond PHMA boundaries, this impact should be noted with associated buffers identified from leks, nesting grounds, PHMA boundaries, etc. in Appendix 2. Appendix 2, Existing Greater Sage-Grouse RMP Management Direction (Utah RMPs) notes that "appropriate measures will be implemented where necessary to minimize the potential for noise impacts." Page 2-UT-14 in column "Changes between 2015 and 2019 GRSG Management" "E-Noise Restrictions" illustrates the DWR-preferred language for the final plan.

Page 2-22: "For alternatives 3 through 6 the proposal is to achieve the ~~at a~~ minimum **standard of** no net habitat loss (full restoration of functional habitats or enhancement of habitats such that it offsets the loss of capacity in impacted areas)."

Page 2-23, Table 2-5: The State is concerned that reference to "impact avoidance in GRSG habitats" is too vague and allows for avoidance outside of designated priority habitat. While avoidance may be prioritized in PHMA, this language would allow for avoidance prioritization in habitat outside of PHMA or potentially in marginal habitat. The State requests more clarity in the language.

Page 2-23, Table 2-5: The State is concerned about the inclusion of additional language regarding the need to complete mitigation before initiating activity and the ambiguity associated with the retention and monitoring requirement. First, the sentence must be clarified to ensure that "retention and monitoring" are also not required before activity can be initiated. More broadly, however, mitigation projects can be time-consuming and significantly delay development if they must be completed in advance of an approved activity. BLM should remove this language from the mitigation table.

Page 2-23, Table 2-5: The State is concerned that the mitigation language for all alternatives requires mitigation to be conducted in the same area of impact. The language states, specifically, "Mitigation shall be prioritized to occur within the same area of the impact (within the same HAF fine scale area), or if not possible, within the same neighborhood cluster to the extent practicable or nearest equivalent HMA designated habitat so that it provides habitat for GRSG populations affected by the project." This could significantly limit the application of mitigation measures using established mitigation banking systems. While it may be generally appropriate to direct mitigation to areas affected by development, there may also be instances where mitigation may be more beneficial outside of those areas. The State suggests a revision of the language to allow for mitigation outside of neighborhood clusters in some instances.

Page 2-28: "Anthropogenic disturbance negatively impacts GRSG abundance and persistence (Knick et al., 2011, 2013)." **This statement is not always true. Certain types of anthropogenic disturbance, such as vegetation management [such as removal of encroaching conifers and mechanical treatment of invasive species] or construction of fuel breaks, can positively impact GRSG abundance and persistence.**

Page 2-28, Section 2.5.5 – Disturbance Cap: Since there is no mention of a "credit" towards disturbance caps, there should be an explicit statement in this section that clarifies the calculations of restoration (as stated in Table 2.7) may reduce the amount of disturbance measured towards the cap.

Page 2-35, Table 2-7: The third paragraph of subparagraph 2 in Alternative 4 describes the process for compensatory mitigation review. The BLM should include an explicit reference here to coordination with DWR regarding the biological effects of compensatory mitigation.

Page 2-36, Table 2-7: The State requests consideration of mitigation outside of the HAF fine scale, as outlined in the 4th bullet point under Criteria 3. This can include verification from a technical team that the area will provide benefit to sage-grouse. However, it will provide flexibility to allow for the implementation of projects outside of the limited HAF fine-scale area.

Page 2-37, Table 2-7: The requirement for mitigation to go into effect before the disturbance should be reconsidered, especially as drafted. There will be significant delay if BLM requires both completion of the mitigation and a determination of the "value of the mitigation," as compared to the habitat affected by the disturbance. Mitigation measures often take considerable time to provide measurable effects, which will significantly delay any project. Moreover, this proposed language does not specify how "value" will be measured and/or compared to habitat affected by the disturbance. This will cause significant confusion as to implementation. The State therefore recommends removal of this language and/or modification to ensure clarity and efficiency in implementation.

Page 2-41, Table 2-8: Alternative 3 is not a reasonable alternative for consideration moving forward. The outright removal of fluid mineral leasing is inconsistent with BLM's multiple-use mandate.

Page 2-49, Table 2-9: Alternative 3 is not a reasonable alternative for consideration. The outright removal of all fluid mineral leases is inconsistent with BLM's multiple-use mandate.

Page 2-50, Table 2-9, Alternatives 4, 5, and 6: The exception considered on public lands due to non-public lands offering higher quality and/or quantity of GRSG habitat is concerning if there are no assurances that the non-public parcel will maintain the same (or improved) degree of habitat suitability. We suggest clarification of how the non-public land will be held to this standard.

Page 2-52, Table 2-9: The final sentence of Alternative 4 on this page is vague and may result in significant confusion as to when such an exception could be issued, who would consider those exceptions, and how that exception would apply. The State recommends revising the sentence for clarity of implementation in the event there is an inconclusive CFA.

Page 2-56, Table 2-9: Subsection e of Alternative 4 states the "compensation necessary to grant this exception must provide the offsetting benefit to the population being impacted by the

potential development." However, it is unclear what qualifies as an "offsetting benefit" in this instance. Perhaps a reference to the mitigation framework would be helpful to add clarity.

Page 2-57, Table 2-9: The final sentence of Alternative 4 on this page is vague and may result in significant confusion as to when such an exception could be issued, who would consider those exceptions, and how that exception would apply. The State recommends revising the sentence for clarity of implementation in the event there is an inconclusive CFA.

Page 2-58, Table 2-9: The State requests clarity on why the "specifically for Wyoming" section outlined in Alternative 5 does not apply rangewide and requests the inclusion of similar language for Utah. Alternatively, the State requests similar language allowing for modifications if/when the appropriate state agency in Utah identifies an area that is "nonessential."

Page 2-59, Table 2-9: The final sentence of Alternative 4 on this page is vague and may result in significant confusion as to when such a modification could be issued, who would consider those modifications, and how modifications would apply. The State recommends revising the sentence for clarity of implementation in the event there is an inconclusive CFA.

Page 2-63, Table 2-9: The BLM should provide further clarification regarding the mitigation tools such as the "Habitat Equivalency Analysis or Habitat Quantification Tool." It should be clarified if they are simply examples of tools utilized by other states or are all states thought to be aware of and utilizing these tools.

Page 2-67, Table 2-9: Regarding the modification that may be granted for a portion of an NSO area, the phrase "overly protective" needs to be defined, as it could be considered a subjective term that may cause debate.

Page 2-73, Table 2-9: The first bullet point in this exception refers to "areas of non-habitat" without reference to how that will be determined. At minimum, this should defer to the process for delineating "non-habitat" under this RMP.

Page 2-74, Table 2-9: The reference to "availability of existing functional habitat" should be clarified to avoid confusion by potential project proponents — the State suggests that "availability" be defined as some available habitats that may not necessarily be considered usable space. Additionally, the State recommends defining what constitutes functional habitat. Such characteristics may include grouse accessibility to habitat, the amount of acreage of available habitat, qualifying that smaller, more isolated acreages may be more susceptible to impacts than larger areas, and the location of the functional habitat in reference to the area of disturbance may impact locations differently.

Page 2-76, Table 2-9: The State is confused as to the meaning of "offsetting benefit" in the first paragraph of this page. Perhaps reference to the mitigation framework would be helpful to add clarity.

Page 2-76, Table 2-9: The final sentence of Alternative 4 on this page is vague and may result in significant confusion as to when such an exception could be issued, who would consider those exceptions, and how that exception would apply. The State recommends revising the sentence for clarity of implementation in the event there is an inconclusive CFA.

Pages 2-78 and 2-88, Table 2-9, Alternatives 4, 5, and 6: In the excerpt, "if the area mapped as PHMAS when the lease was issued is no longer mapped as such through the appropriate planning process…" we suggest adding "no longer mapped as such and verified by the AO and local DWR biologist that no impacts will occur…" to account for the possibility of the maps changing and not including some critical habitat necessary for population sustainability. We recommend the same verbiage added to the similar statement on page 2-88.

Page 2-93, Table 2-10: There is reference in the first bullet point for Alternative 5 to "appropriate state authority." The State requests revision to reference the "appropriate state agency."

Page 2-92: The **PEIS** is updating the BLM's RMPs related to solar energy development**.**

Page 2-96, Table 2-10, Alternatives 5 and 6: The State suggests a more specific definition of "micro-siting" — particularly, the DWR recommends this includes on-the-ground validation from the AO in collaboration with a DWR biologist.

Page 2-99: Section 2.5.9 mentions predation by ravens, but fails to mention predation by owls, eagles, and other raptors (see Section 3.5.3), coyotes, red foxes, raccoons, skunks, badgers, bobcats, weasels, and snakes (see: Section 3.5.2 and https://www.blm.gov/blog/2022-07-27/sage-grouse-balance-predators and https://snakesexplorer.com/what-snakes-eat-eggs/ and https://www.pbs.org/wnet/nature/sagebrush-sea-food-web/12265/. For additional information regarding the effects of ravens on sage grouse, see Human–Wildlife Interactions | Vol 15 | Iss 3 (usu.edu).

Page 2-100, Table 2-11: The State requests clarification as to the differences between Alternative 3 and Alternative 4. Alternative 4 states it is the same as Alternative 3, but then seemingly proceeds to outline differences.

Page 2-100, Table 2-11: The second paragraph of Alternative 3 unnecessarily constrains management responses for areas where ravens are affecting greater sage-grouse. Under this language, there must first be data presented regarding the limiting effect of predators in specific areas. This is followed by a strategy for monitoring removal efficacy. As discussed above and at minimum, there should be proactive plans in place with APHIS, FWS, and all related agencies to ensure action can be taken immediately after recognition of increased predation on GRSG populations.

Page 2-101, Table 2-11: Predator abundance estimates – The State recommends BLM describes in more detail how it will coordinate with Federal and State wildlife agencies to extrapolate this, and how estimates will be determined for predators whose populations have not been or cannot be estimated. The State also suggests a plan to identify which predators will be evaluated.

Page 2-101, Table 2-11: It is unclear whether there are any requirements for the measures outlined in the final bullet point under Alternative 3. If there are such requirements for existing development, the State requests clarity as to who will be responsible for the cost of installing/maintaining predator control measures on existing development.

Page 2-102, Table 2-11: It is unclear whether there are any requirements for the measures outlined in the final bullet point under Alternative 3. If there are such requirements for existing development, the State requests clarity as to who will be responsible for the cost of installing/maintaining predator control measures on existing development.

Page 2-103: Section 2.5.10 should reference a recent study by the University of Idaho, which found that "Spring grazing resulted in a greater number of insects, a greater variety of insects and the insects found under the spring grazing treatment generally are bigger, which could provide more food for sage grouse." Scientists also learned that the presence of cattle in places where sage grouse nested, and grazing of spring grass, had no effect on nest success. See https://www.uidaho.edu/news/feature-stories/sage-grouse-ten.

Page 2-107, Table 2-12: The final sentence in the first paragraph of RM-3 under Alternative 4 needs clarification. Does the phrase "as workload capacity allows" apply to the creation of specific thresholds/responses or to the determination of when those thresholds have been met and responses are necessary? The State requests clarification here.

Page 2-108, Table 2-12: The final sentence of the bullet point under Alternative 4 is ambiguous. What does it mean to "have the desired intent" and who will be making such determinations? The State requests clarification here.

Page 2-107, Table 2-12: The final sentence in the first paragraph of RM-3 under Alternatives 5 and 6 needs clarification. Does the phrase "as workload capacity allows" apply to the creation of specific thresholds/responses or to the determination of when those thresholds have been met and responses are necessary? The State requests clarification here.

Page 2-109, Table 2-12: The State requests clarity on who will pay the cost of upgrading and/or maintaining projects that negatively affect GRSG or GRSG habitat. Livestock producers should not have to bear the entire burden of upgrading range improvements.

Page 2-111, Table 2-12: The State requests clarity on who will pay the cost of upgrading and/or maintaining projects that negatively affect GRSG or GRSG habitat. Livestock producers should not have to bear the entire burden of upgrading range improvements.

Page 2-112, Table 2-12: Management Action RM-7 is inconsistent with the State resource management plan. State policy is to reallocate and reauthorize grazing permits that have been voluntarily relinquished. The State has a significant interest in maintaining strong agricultural production and this policy is meant to protect that interest. Additionally, if the BLM makes these areas a reservation or common allotment, they should be allowed to be used during drought years.

It is nonsensical to restrict their use during drought years as these would be the best areas to remain healthy during use in drought because they have been rested the longest.

Page 2-113, Section 2.5.11 – Wild Horse and Burro Management: This section states that maintaining wild horses and burros at AML is integral for successful GRSG planning. The State supports wild horse and burro management and suggests that the plan identify any new strategies or funding to manage "local conditions and available resources."

Page 2-117: "Areas identified with the above criteria are analyzed in this EIS to determine if they meet the third FLPMA ~~required~~ **requirement**: the need for special management to protect and prevent irreparable damage." In addition to the grammatic suggestions, the State requests clarity as to the definition of "irreparable damage."

Page 2-117: Section 2.5.12 should also mention that several western state and county resource management plans contain policies and criteria associated with the designation of ACECs and that consistency with state and local plans is required by FLPMA.

Page 2-118, Table 2-14: The State provided specific comments regarding ACECs on May 15, 2024, and incorporates those comments by reference herein. As discussed in that letter, however, the State does not support the designation of ACECs under either Alternative 3 or 6. Alternative 3, for instance, does not highlight what, if any, special management is required within the proposed ACECs. Instead, Alternative 3 defers ACEC management to the same prescriptions already outlined in Alternative 3. If there is no "special management" required beyond that which is contemplated by the RMP, there is no need for the designation of an ACEC. Additionally, as discussed in the State's letter dated May 15, 2024, the ACEC designations under Alternatives 3 and 6 are not consistent with the State resource management plan. The State therefore supports the BLM's recognition of Alternative 5 as the preferred alternative.

Page 2-120, 2.5.13: Utah worked closely with the BLM in prior planning processes to develop a monitoring framework that effectively captures populations of concern using the state-provided lek count data. The State requests a separate alternative that considers the use of that system, with explicit deference to the state for population-related data and population concerns. The state has jurisdiction over sage-grouse and should therefore have the authority to evaluate and make determinations regarding population-related thresholds.

Page 2-120, 2.5.13: References to local responses for GHMA should be removed. GHMA in Utah is often a marginal habitat, at best. Allowing for discretionary review of potential adaptive management in GHMA could result in significant changes that will not affect the species. At a minimum, there must be sideboards to such considerations outside of PHMA.

Page 2-121, 2.5.12: The State appreciates the recognition of coordination as a first step in an initial causal factor analysis. To further ensure recognition of state primacy over the species, the State requests an explicit statement here that "State wildlife agencies will make the final determinations as to population trends that warrant adaptive management consideration."

Page 2-123, Table 2-15: The language in Alternatives 5 and 6 does not delineate between hard and soft thresholds. The State requests clarification in this language to ensure that it applies during the rapid assessment process for either a soft or hard threshold.

Page 2-125, Table 2-15: The State has significant concern regarding capacity for CFA: In comparing 2015 triggers for the 2016-2022 time period significantly more thresholds initiating a CFA would be crossed using TAWS relative to 2015 RMP triggers. In the 2016-2022 time period, there were 6 hard triggers for Utah, with two CFAs still pending as of Dec 2023. TAWS produced 25 warnings in Utah at that same time. How are CFA's efficiency and capacity being addressed in this planning process? Clear guidelines and templates included in an appendix for both full and initial CFAs may increase efficiency significantly.

Page 2-125, Table 2-15: Utah does not support the extended delay of new permitted activities when a soft threshold is met, and the full CFA is not completed within 6 months. As discussed above, TAWS will likely produce additional warnings in the state, stretching the capacity of local BLM to conduct these analyses. The result is further delay in review and ultimately further delay in permitting activities, even if no cause has been identified.

Page 2-126, Table 2-15: It is not clear what it meant by the phrase “income potential of the event.” The State requests clarification in this language.

Page 2-126, Table 2-15: Consider revising the "grazing exception" language as follows: “Grazing permits will be renewed following standard permit renewal regulations (43 CFR 4180). Grazing permits within PHMA will be analyzed and approved through NEPA and have adequate flexibility to adjust grazing management within the permit to address any situation occurring on the landscape, i.e., wildfire, drought, feral horses, etc.” Adding additional terms and conditions to address temporary threshold exceedances is unnecessary when the renewed permit includes the flexibility for the authorized officer to adjust or modify the grazing practice accordingly. Grazing terms and conditions will only be adjusted during the term of the permit if improper livestock grazing is shown to be a significant causal factor under the SSS of Standards for Healthy Rangelands.

Page 2-127, Table 2-15: The State requests the removal of the following sentence: "If a reduction in the ability for the habitat to support GRSG occurs as a result of habitat impacts, additional restrictions may be necessary to preclude further habitat losses." There is no clarity as to what qualifies as "a reduction in the ability for habitat to support GRSG" and/or what "additional restrictions" would be allowed here.

Page 2-122 and 2-127, Table 2-15, Alternatives 3, 4, 5, and 6: The State acknowledges the effort made to include the reversal of a soft or hard habitat threshold – restoration, precipitation, and weather patterns may increase habitat abundance and quality, rendering the threshold redundant. This is also mentioned on page 2-127.

Page 2-128, Table 2-15: The State has concerns about the capacity of agencies to complete the required post-fire evaluation, especially within the proposed 60-day time frame. In addition to

state wildlife agency input, consider also allowing project proponents to contribute to habitat evaluation if habitat loss is precluding permitting.

Page 2-128, Table 2-15: Utah does not support regulatory action without supporting evidence as currently suggested in the inconclusive CFA language. Utah suggests continued monitoring and periodic re-evaluation for inconclusive CFAs. Suggested Language: "If no cause for a habitat or population decline can be determined the BLM shall continue to monitor habit conditions through the Habitat Assessment Framework for continued declines in habitat condition, continue to monitor habitat loss, and continue to monitor anthropogenic disturbance. Populations shall be monitored in coordination with the state wildlife agency. Causal factor analysis should be repeated five years from the initial trigger or sooner if a subsequent TAWS **[or state agency calculated]** trigger is met."

Page 2-129: Another state-specific circumstance that should be mentioned in Section 2.6 is that several western states and western counties have adopted resource management plans that contain policies associated with GRSG. As required by FLPMA, the BLM plans to manage GRSG must be consistent with these state and local plans to the greatest degree possible, consistent with federal law.

Page 2-183, Table 2-39: The State suggests the removal of the "Net Conservation Gain" heading to reflect more appropriately the "no net loss" standard articulated under that heading. Otherwise, there will be confusion as to whether the "net conservation gain" standard applies.

Page 2-183, Table 2-39, Alternatives 4, 5, and 6: The DWR appreciates the implementation of buffers and the distances described in the referenced Open File Report (OFR). https://pubs.usgs.gov/of/2014/1239/

Page 2-185, MA-SSS-6, Table 2-39: There is confusion here as to where the management will apply. As drafted, Alternative 4 suggests management will be applied to areas outside of GHMA. That would be a significant expansion of management outside of sage-grouse habitat within the State. This must be clarified to ensure the GHMA management is appropriately limited.

Page 3-5: "Predators of GRSG include golden eagles (Aquila chrysaetos), great horned owls (Bufo virginianus), coyotes (Canis latrans), and common ravens (Corvus corax). Populations of golden eagles, great horned owls, and coyotes have not increased during the last century, so they likely have not contributed to GRSG population declines." Red foxes, racoons, skunks, badgers, bobcats, weasels, and snakes need to be added to this list of predators (*see* Section 3.5.2 and https://www.pbs.org/wnet/nature/sagebrush-sea-food-web/12265/). Additionally, the State requests continued recognition in this section that raven populations have increased exponentially during the last century.

Page 3-6: "Areas outside of subpopulation centers are likely important for maintaining overall connectivity by allowing different genetic groups to converge (Cross et al. 2018; Oyler-McCance et al. 2022)." "Areas outside subpopulation centers are also priorities for conservation to protect

areas where different genetic groups converge maintain overall connectivity." **These two sentences appear in the same paragraph and appear to be redundant.**

Page 3-7, Existing Habitat Management Areas: The State suggests clarification in the second paragraph on this page. First, it defines sagebrush focal areas as a subset of PHMA. There should be clarification that SFAs may not be included as part of PHMAs in the ongoing planning process. Otherwise, there may be confusion if BLM ultimately removes SFAs from this plan. Second, the language equates GHMA to "remaining suitable habitat." While there may be some suitable habitat in GHMA in Utah, there are also areas designated as GHMA that are not habitat. The State requests clarification here, as GHMA is not defined or applied uniformly across the range.

Page 3-10: "Due to negative impacts to GRSG associated with non-renewable energy development, **there** is concern that renewable energy development may also ~~have~~ negatively effect GRSG habitats and populations (NWCC 2017; Hanser et al. 2018)."

Page 3-10 and 3-11 (Persistent and Emerging Threats): This section on Predation focuses on the impacts of ravens but fails to mention impacts from other predators such as golden eagles and other raptors (see Section 3.5.3), great horned owls, coyotes, red fox, raccoons, skunks, badgers, bobcats, weasels and snakes (see Section 3.5.2).

Page 3-11 (Persistent and Emerging Threats): This section focuses on the impacts of wild horses but does not mention the impacts of wild burros, which are also overpopulating the range.

Page 3-19: "Susceptibility to wildfire occurrence~~, which~~ results from fuel loading, vegetation characteristics, or as a natural condition of the environment (for example, drought)."

Page 3-20: "Sagebrush range in good condition supports an abundant understory of protein-rich bunchgrasses and forbs providing habitat for **use** by small mammals. Examples of species **that** are associated with sagebrush vegetation communities include…"

Page 3-21: "Common ravens (Corvus corax) populations have nearly doubled in the past 50 years (USFWS 2023) and **are** extremely adaptable to human-altered environments and disturbance (Howe et al. 2014)…. The continued expansion **of** human-related structures in sagebrush will likely drive increases in common ravens (USFWS 2023)."

Page 3-22: "Predatory snakes, such as gopher snakes, are unable **to** consume GRSG eggs but have been observed constricting and consuming a 19-day**-old** juvenile GRSG chick (McIntire 2020). Amphibians, specifically frogs and toads, are important indicators of ecosystem health because they are highly sensitive to environmental changes. Widespread population declines in the western United States are ~~be~~ attributed to disease, pollution, exposure to toxins from energy development, habitat loss and degradation, and the effects from climate change."

Page 3-23: "The BLM cooperates with USFWS **to** identify and properly manage recovery habitats."

Page 3-27, Pinyon Jay: The last sentence of the second paragraph on this page references thinning activities for pinyon-juniper and states such activities "may be negatively impacting pinyon jay populations." This is an overly broad statement and there is no science cited in support. The State requests clarification on this point and/or a narrowing of the statement to ensure that it is not interpreted to mean all pinyon-juniper thinning should cease. The ongoing research in this area, while not fully complete, suggests thinning activities may not be harming pinyon jays as suggested by this language.

Page 3-32: "Easements are authorizations for a non-exclusive interest in lands that specifies the right**s of** ~~to~~ the holder ~~the obligation of the BLM~~ to use and manage the lands in a manner consistent with the terms of the easement."

Page 3-35: "The North Park Basin occupies approximately 1.3 ~~in~~ thousand **square** miles…"

Pages 3-37 and 3-38: In the discussion of phosphate mining in Utah, there is no indication of how these resource areas overlap with GRSG HMA.

Page 3-38: In the discussion of Gilsonite mining in the Uinta Basin of Utah, there is no indication of how these resource areas overlap with GRSG HMA.

Pages 3-38 to 3-40: In the discussion of coal resources, there is no indication of how these resource areas overlap with GRSG HMA.

Page 3-42: "The Oil Shale and Tar Sands ROD removed federal mineral estate within all GRSG HMAs in Utah from potential oil shale and tar sands leasing, subject to valid existing rights." Please explain here why the ROD removed GRSG HMAs in Utah from oil shale and tar sands leasing but not in Colorado and Wyoming.

Page 3-42: "Although resource potential within the Piceance Basin totals approximately 1.2 trillion barrels of oil in place, only part of it can be recovered depending **on** the accessibility of the oil shale for development and method of mining used (Taylor 1987)."

Page 3-43: "Within a planning process, the BLM solicits requests for nominations with the Notice of Intent and then analyzes any nomination for relevance and importance. Any ACECs that meet at least one relevance criteria and at least one importance criteria must be brought forward for consideration in at least one alternative." **It should be noted here also that, pursuant to FLPLA, proposed ACECs must be evaluated for consistency with state and local land and resource management plans.**

Page 3-46: "Although coal accounts for a small percentage of total economic contributions and employment in local communities, jobs associated with coal mining tend to be high paying compared with other types of employment in rural communities." **The same should be said for all types of energy and mineral production jobs; not just coal, nonenergy and locatable mineral extraction.**

Page 3-47: "Sand and gravel, used often as construction aggregate, are an extremely important resource and extraction **rates fluctuate** directly with the amount of development—road building and maintenance, and urban development—nearby."

Page 3-48: On this page, employment data is provided for a typical geothermal project but not for a typical wind or solar project.

Page 3-50: "As wild horse and burro populations exceed AMLs, wild horses and burros can be causal factors for failing to meet applicable **land health** standards."

Page 3-50: "The BLM uses wild horse and burro funding for a variety of activities, including off-range holding activities, gathers, and **fertility control** ~~other activities~~."

Page 3-51: "BLM-administered lands provide a range of goods and services that benefit society in a variety of ways **as required by the multiple use and sustained yield mandate in FLPMA**."

Page 3-54: "Concerns were identified about impacts on food prices and availability due to restrictions on grazing and mineral development (especially trona mining) in Wyoming and Idaho. These comments were in the context of economic conditions, however, increases in food prices and decreases in food availability tend to disproportionately impact low-income individuals who have more limited means for finding alternatives. This issue will be carried forward and examined in the analysis of the impacts on environmental justice populations." **The same EJ concerns apply to impacts on the energy market if GRSG restrictions were to impact supplies of energy and further drive up already high prices. EJ populations are disproportionately impacted when the price of energy commodities such as home heating cooking fuels and vehicle fuels increase.**

Page 3-60: "Livestock grazing, as a land use, plays a role by influencing the composition and health of vegetation." **Livestock grazing is often blamed for poor soil health conditions. On the contrary, properly managed livestock grazing is beneficial and can reduce fuel loads that increase the potential for wildfire. Some studies have shown that managed grazing can increase soil organic matter and improve its structure, which can result in improved water infiltration and storage, as well as reduced erosion. Managed grazing can also increase forage production, leading to increased carbon sequestration. Livestock grazing can help to improve the quality of soil. This is because grazing animals help to break up compacted soil and their manure adds important nutrients back into the soil, and it can also lead to increased water infiltration and improved drainage. Grazing animals can also help to control weeds because they will eat certain types of plants that are considered to be weeds, by farmers. Helping to keep these plants from taking over an area and crowding out other vegetation (see: https://vhive.buzz/how-does-livestock-grazing-benefit-the-environment/).**

Page 3-62: "Degradation by *excessive grazing*, recreation, erosion, or land developments have caused a reduction in soil function as one or perhaps many of the soil properties are changed

thereby affecting the functions necessary for healthy soils." "In the planning area, impacts on soil resources have resulted from various factors, including increasing temperatures, changing precipitation patterns, wildfire seasons, infestations like pinebark beetle, juniper and cheatgrass invasion, *compaction from livestock grazing*…". **It should be noted here that excessive grazing and compaction is often caused by overpopulated wild horses and burro herds; not by domestic livestock grazing, which is highly regulated.**

Page 3-66: "In the planning area, conditions affecting stream temperature, such as the amount of near-stream vegetation, channel shape, and hydrology, are most associated with land use practices. *Livestock grazing* has been identified as a significant factor (Weltz et al. 2017)." "These impairments can be linked to activities such as animal feedlots, crop production, *livestock grazing*, habitat alterations, construction activities, permitted discharges from industrial, municipal, and stormwater sources, and lesser so from channelization, sewage disposal, mine tailings, hardrock mining, industrial forestry, and recreation and tourism." **It should be noted here that water quality issues are often caused by overpopulated wild horse and burro herds; not by domestic livestock grazing, which is highly regulated.**

Pages 3-66 and 3-67: "Since most water in the planning area originates from precipitation, yearly climatic conditions play an important role in the *volume of water* available. This, in turn, determines available riparian habitat and conditions, particularly in systems that are more dependent on snowmelt and local precipitation events (Weltz et al. 2017)." " Activities associated with recreation, energy development, and grazing have resulted in significant impacts on water supply and quality within GRSG habitat." **The volume of water available in the planning area is also dependent on the level of, or lack of, vegetation management that is occurring. Invasive species such as Tamarisk/salt cedar and Russian Olive, if not controlled, will continue to consume significant quantities of water that would otherwise be available for beneficial use. (see: https://www.usgs.gov/programs/biological-threats-and-invasive-species-research-program/science/invasive-plants-we-1).**

Page 3-67: "As early land management reduced vegetation in the watershed, overland flow of water increased, and stream channels deepened." **This sentence needs clarification and additional references. Consider revising to explain that the decreased overland flow of water and resulting channel deepening/incising/downcutting has also been attributed to lethally trapping beavers. (see: https://northernwoodlands.org/articles/article/beaver-dam-analogs).**

Page 3-68: " Changing and persistent drought conditions have also significantly impacted water availability and conditions (Weltz et al. 2017)." **The 2023 water year and the 2024 water year (to date) have snapped the streak of dry years and moderated drought conditions (see: https://water.utah.gov/wp-content/uploads/2024/03/Utah-Water-Conditions-3-5-2024.pdf).**

Page 3-68: "These may comprise archaeological, historic, or architectural sites, structures, **trails and roads,** objects, or places, and may include locations of traditional cultural or religious importance to a particular social and/or cultural group, often referred to as Traditional Cultural Properties (See Section 3.17, Tribal Interests)."

Page 3-69: "The majority of the planning area has not been inventoried since resource inventories are driven by project-based cultural resource **surveys**. New discoveries are documented regularly through regulatory compliance actions."

Page 3-73: "Although lands with wilderness characteristics share the same criteria used to identify wilderness and WSAs, they are not subject to protective requirements prior to a planning or project-level management decision, though consideration for protection opportunities is part of the land use planning process." **Text directly from the BLM Policy Manual 6320 may be appropriate here. "When the BLM has inventoried an area and determined that it possesses wilderness characteristics, the Bureau is not required to protect those characteristics as a priority over other resource values and multiple uses. Inventory and management are separate activities, carried out under different provisions of FLPMA (Sections 201 and 202, respectively). The Bureau has full discretion in how to manage an area that possesses wilderness characteristics and may decide not to protect such characteristics" (see: https://www.blm.gov/sites/default/files/docs/2021-01/BLM-Policy-Manual-6320.pdf).**

Pages 3-73 through 3-75: It is troubling to note in Section 3.18.1 that many BLM offices in California, Colorado, Idaho, Montana, portions of Nevada, Oregon, portions of Utah and portions of Wyoming have inventoried LWCs but have not followed through to determine if such lands should be managed for multiple use or to protect wilderness characteristics. This creates "de-facto" wilderness, which is not appropriate and is contrary to the multiple use and sustained yield mandate in FLPMA.

Page 3-73, 3.18.1 Current Conditions of Lands with Wilderness Characteristics: Request for clarity – can the plan identify whether the lands identified herein are within GHMA or PHMA in the Uintah Basin?

Pages 3-76 and 3-77: "Many areas currently designated as open to cross-country travel will need to be changed to limited or closed designations to minimize resource impacts in the future. However, changing areas from OHV **open** to OHV limited or closed may not be possible due to RS 2477 rights associated with existing roads." **The State appreciates the acknowledgement that RS 2477 rights will prevent the closure of roads that have these valid, existing rights. In addition, the analysis should recognize that closing of historical routes before they are evaluated for National Register eligibility may prevent members of a rural community from engaging in traditional economic, artistic, or cultural activities that are rooted in the community's history and are important in maintaining the continuing cultural identity of the community. Finally, the analysis should recognize that allowing continued use of existing routes provides the best access for search and rescue efforts.**

Page 3-77: "Previously constructed roads may also require upgrading in width and ROW as ~~drilling operations~~ **extracted resources** are transported to collection and production facilities."

Page 4-1: "Habitat management and designations impact GRSG by influencing the level of activities and associated disturbances **that** can occur in GRSG habitat."

Page 4-4: "Infrastructure for mining is like that required for ~~oil and gas~~ **fluid minerals** but is more localized in extent, but mines may have a large footprint."

Page 4-4: "Surface mining has a greater direct habitat impact than underground mining but disturbance from above ground infrastructure for **underground mining** also results in direct loss of habitat if it occurs in GRSG habitat.

Page 4-5: "Areas managed as ROW exclusion would prohibit development of all or certain types/ subsets of ROWs (e.g., utility scale wind and solar testing and development). In areas managed as ROW avoidance the BLM would consider allowing ROW on a case-by-case basis. This flexibility may be advantageous where federal and private landownership areas are mixed and exclusion areas may result in more widespread development, potentially in higher quality habitat, on private lands if BLM-administered lands could not be used." **This would be a good place to note that the BLM is currently preparing a utility scale solar PEIS and address whether GRSG HMA will be avoided in the alternatives being analyzed.**

Page 4-9: "In areas of mixed land ownership, making public lands unavailable for grazing that are adjacent to private, **state or tribal** grazing lands would result in more fencing."

Page 4-9: "Fences used to manage horse **and burro** distribution represent a potential source of direct mortality to GRSG (Manier et al. 2013). Year-round water availability in horse **and burro** herd management areas and wild horse territories is required by the Wild and Free-Roaming Horses and Burros Act of 1971. This can result in year-long use of riparian areas by wild horses **and burros** and other modifications (e.g., fences, troughs)."

Page 4-9: "GRSG are prey for various predators including**, but not limited to,** coyotes, badgers, bobcats, red fox, hawks, and corvids (Mainer et al. 2013)."

Page 4-10: "Predators, especially coyotes are often controlled to prevent livestock loss, **and this** may reduce predation on GRSG."

Page 4-10, Predator Management: The proposed language, as drafted, allows for potential management *in the event* ravens are identified as an issue. However, it would be far more efficient and effective to proactively develop a comprehensive plan for predator control throughout the range, with assurances and deference to each agency already involved (DWR, FWS, APHIS, FS, BLM, etc.).

Page 4-10: "However, the conservation value of an ACEC designation for GRSG depends on **the** area's purpose, and in some cases, surface-disturbing activities may be allowed. **It should also be noted here and in the evaluation of other alternatives that many states and counties have policies in their own resource management plans that may curtail the use of ACECs to benefit GRSG.**

Page 4-11: "Calculating disturbance at the project-level ~~means~~ may prevent some development that could occur if disturbance is only calculated at a coarser scale."

Page 4-12: "Development could still occur in UT GHMA potentially resulting **in** alteration, direct loss, and fragmentation of seasonal GRSG habitats."

Page 4-12: "In PHMA outside of SFAs, no waivers or modifications would be allowed; however, exceptions could be considered on a very limited basis, and only in circumstances where granting an exception would ~~have~~ either have no impacts or would reduce impacts on GRSG."

Page 4-14: "The oil and gas lease stipulations summarized in Appendix 2 would be applied in MT/DK; these stipulations would reduce the potential for impacts associated with fluid mineral leasing as described in ~~in~~ Nature and Types of Effects."

Pages 4-15 and 4-39: "Existing ROW corridors are preferred for collocation of new ROWs but could not be widened more than 50% greater than the original footprint." **Here and in other applicable alternatives, it should be noted that limiting the widening to 50% of the width existing may not be wide enough to safely accommodate a parallel transmission line.**

Page 4-16: "Impacts to GRSG and habitat from **[improper]** grazing, such as habitat alterations, could occur in PHMA, GHMA, and ID IHMAs as described in Nature and Types of Effects." **Recommend the reference be to "improper grazing."**

Pages 4-16 and 4-17: "Under Alternative 1, wild horse **and burro** populations would continue to be managed for AMLs and in balance with other resource uses (e.g., rangeland health, livestock, and wildlife). Wild horse **and burro** gathers would be prioritized based on escalating or potential emergencies, public safety, nuisance animals, court orders, population growth suppression, and resource impacts associated with monitoring data, which is generally based on wild horse **and burro** population inventories, wild horse **and burro** condition, availability of sufficient water and forage resources, rangeland health, use levels of upland habitats, and riparian resource conditions. Evaluation of land health assessments in wild horse **and burro** HMAs could identify vegetation conditions that could prompt gathers, reducing wild horse **and burro** numbers and the associated impacts on GRSG habitats. **This section is to address wild horse and burro management, but as written, there is no discussion of burro management. This may need to be clarified in the analysis of other alternatives as well.**

Pages 4-21 and 4-22: "Under Alternative 3, all HMAs would be managed as PHMA, over double the acreage of PHMA compared with Alternatives 1 and 2 (Table 2-3)." "The disturbance cap would not be applicable to new authorizations since all PHMA would be closed to new infrastructure projects." **Alternative 3 is contrary to the January 2019 Utah Conservation Plan for Greater Sage Grouse (see: https://wildlife.utah.gov/sage-grouse/Utah_Greater_Sage-grouse_Plan.pdf).**

Page 4-23, Habitat Designation and Management: The discussion herein demonstrates the unreasonableness of Alternative 3 in Utah, as it would include as PHMA "some areas of

unoccupied habitat, historic habitat where birds have not been observed in 20 years or more or may have never occurred (e.g., habitat west of Sanpete Valley), areas of non-habitat (e.g., phase 3 pinyon-juniper, rock outcrops)." Indeed, the discussion recognizes that such inclusion would not be the least restrictive constraint necessary to meet the needs of the species. The HMA designations under Alternative 3 are therefore unreasonable and should not be included for consideration. Additionally, the paragraph indicates some, but not likely all, of the reasons why Alternative 3 is contrary to the January 2019 Utah Conservation Plan for Greater Sage Grouse **(see: https://wildlife.utah.gov/sage-grouse/Utah_Greater_Sage-grouse_Plan.pdf).**

Page 4-23: "However, restrictions to development on BLM lands might push development onto private**, state and tribal** land, which could result in indirect impacts as described under Nature and Types of Effects."

Page 4-23: "All PHMA would be excluded from new ROW authorizations. New linear ROWs would be allowed only in designated ROW corridors. This would decrease the potential for impacts associated with ROW development. However, the inability to site ROWs in PHMA could lead to longer ROW routes in order to bypass closed areas. Longer routes would increase surface disturbance and other impacts of ROW siting on GRSG habitats outside of PHMA and may result in increased impacts on GRSG populations using habitat on adjacent private lands." **Alternative 3 would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will traverse 732 miles at a total cost of about $3 billion, or about $4.1 million per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/). Designating all habitat as PHMA and then forcing power lines to avoid PHMA under Alternative 3 will add millions to the cost of new facilities, drive up electric bills for all Americans, add years to the planning processes for infrastructure projects, and open additional avenues for challenging the plan through litigation.**

Page 4-24: "PHMA in all states would be ROW exclusion areas for wind and solar energy development. Prohibiting wind energy development would eliminate the likelihood for habitat loss, degradation, fragmentation, and direct disturbance to birds in these areas." **Alternative 3 runs counter to the Biden Administration's climate goals to *"reduce greenhouse gas emissions 50-52 percent below 2005 levels in 2030, achieve a carbon pollution-free electricity sector by 2035, and achieve net-zero emissions by no later than 2050"* (see Executive Order #14082).**

Page 4-24: "However, if livestock are removed **[from]** BLM **[land,]** fences may be erected to fence out BLM lands from adjacent private**, state or tribal** grazing lands."

Page 4-24: "Additionally, removing livestock from BLM lands may concentrate grazing on private**, state and tribal** lands, potentially leading to overgrazing and decreased GRSG habitat suitability where concentrated grazing occurs."

Page 4-25: "Under Alternative 3, all PHMA would be managed as ACECs." **It should be noted here that several western state and county resource management plans contain policies and criteria associated with the designation of ACECs and that proposed ACECs must be evaluated, pursuant to FLPMA, for consistency with these state and local plans.**

Page 4-25, ACEC Designation: In evaluating ACECs, the BLM must identify and justify the difference between special management required for the ACEC and normal multiple-use management authorized by FLPMA. Alternative 3 does not justify any "special management" beyond what is already proposed for PHMA. Indeed, the language outlined on this page expressly states that ACEC management would be the same as PHMA management under this alternative. As such, there is no basis for identifying ACECs under Alternative 3 because there is no need for "special management."

Page 4-28: "In Idaho, lek buffers would be the same as under Alternative **???** (Appendix 19)."

Page 4-28: "However, since PHMA would apply to a smaller area under this alternative, the extent of protection from disturbance associated with ~~from~~ renewable energy development would be less.

Page 4-29: "Impacts from reducing opportunities for predators would be similar to those described for Alternative 1 with the exception that precluding new anthropogenic infrastructure ~~new anthropogenic infrastructure~~ would be avoided where possible."

Page 4-30, Habitat Designation and Management: There is no justification for the suggestion here that any time lag could potentially be measured in "decades." This is particularly problematic in a state like Utah, where Utah's Watershed Restoration Initiative, and its associated mitigation banking system, can put mitigation into place much sooner than a decade. Moreover, the subsequent sentence suggests that both population and habitat declines are likely to occur to a greater extent than Alternative 4 as the result of this time lag. This language is highly speculative and unsupported. Suggested language change:

"Allowing a project to proceed before compensatory mitigation is in place **may** result in a time lag, during which GRSG habitat **may** be fragmented and reduced in carrying capacity by project impacts. **Habitat** and population trends may continue to decline to a greater extent compared to Alternative 4 **if this time lag occurs**. Impacts from population and habitat adaptive management would be the same as described for Alternative 4."

Page 4-33, Wild Horse and Burro Management: There is a mismatch between the language outlined here and the language in the tables above for Alternatives 5 and 6. This section discusses management to the "low end" of AML, whereas the language in the table discusses only management to established AML. Request clarification regarding which will apply.

Page 4-34: "Under Alternative 6, the acres of ACECs would be the same as in Alternative 3,…" **It should be noted here that several western state and county resource management plans contain policies and criteria associated with the designation of ACECs and that proposed**

ACECs must be evaluated, pursuant to FLPMA, for consistency with these state and local plans.

Page 4-35: "Aboveground site-type ROWs**, solar energy projects** and wind energy projects would remove vegetation during the life of the project, often lasting several decades, but areas would be reclaimed after the ROW is decommissioned."

Page 4-35: "This flexibility may be advantageous where federal and ~~private~~ **non-federal** land ownership is mixed, as exclusion areas may result in more widespread development on private**, state and tribal** lands."

Page 4-42: "Therefore, managing previously designated GHMA as PHMA would minimize potential impacts to vegetation to a greater extent than if they remained managed as GHMA. Expanding PHMA in some states to include areas of adjacent non-habitat, unoccupied historic habitat, or areas with potential to become habitat as PHMA would also increase protections for and minimize impacts to vegetation." **This statement may not be true, given that grazing would not be permitted. Proper grazing may reduce fuel loads and the risk of wildfire, which is a major reason for the loss of GRSG habitat. If Alternative 3 does not allow for active vegetation management, the Alternative may produce unintended consequences not only relating to wildland fire severity but also to the encroachment of undesirable vegetation.**

Page 4-43: "Closing PHMA in all states to fluid mineral leasing, salable minerals, and non-energy minerals **(subject to valid, existing rights)** would reduce the potential for impacts to vegetation, such as direct vegetation loss, increased fragmentation, and increased weed spread as described under the Nature and Types of Effects."

Page 4-43: "However, the inability to site ROWs in PHMA could lead to longer ROW routes in order to bypass closed areas which would in turn increase surface disturbance overall and other impacts of ROW siting on vegetation outside of PHMA." **The ROW restrictions in Alternative 3 run counter to the Biden Administration's climate goals to *"reduce greenhouse gas emissions 50-52 percent below 2005 levels in 2030, achieve a carbon pollution-free electricity sector by 2035, and achieve net-zero emissions by no later than 2050"* (see Executive Order #14082). Further, Alternative 3, and to a lesser extent, other alternatives, would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will traverse 732 miles at a total cost of about $3 billion, or about $4.1 million per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/). Designating all habitat as PHMA and then forcing power lines to avoid PHMA under Alternative 3 will add millions to the cost of new facilities and drive up electric bills for all Americans.**

Page 4-44: "The updated language would allow for flexible management that could identify problems sooner and assist in reducing potential vegetation disturbances and **the spread of** invasive plants and noxious weeds ~~spread~~."

Page 4-45: "No net habitat loss and disturbance limits would not apply to the removal of invasive or encroaching vegetation, where such removal creates **or improves** habitat." **Any alternative selected by the BLM should include this provision allowing vegetation treatments that create or improve habitat for GRSG and not being counted toward disturbance limits.**

4-46, Wild Horse and Burro Management: There is a mismatch between the language outlined here and the language in the tables above for Alternative 5. This section discusses management to the "low end" of AML, whereas the language in the table discusses only management to establish AML. Request clarification regarding which will apply.

Page 4-47: "Under Alternative 3, all PHMA would be unavailable for livestock grazing. This could limit the BLM's ability to achieve resource objectives as described under the Nature and Type of Effects and could ~~alter~~ **increase** the risk of large-scale wildfires." Additionally, as discussed throughout, the removal of grazing under Alternative 3 is also illegal and violative of the Taylor Grazing Act.

Pages 4-48 and 4-49: "This flexibility may be advantageous where federal**, state, tribal** and private landownership areas are mixed and exclusion areas may result in more widespread development on **state, tribal and** private lands if BLM-administered **lands** could not be used.

Page 4-50: "Additional range improvements for water availability ~~would place~~ **include** troughs that can create drowning risks for wildlife if not properly constructed with adequate escape ramps and maintained."

Page 4-55: "This action could ~~lead~~ **impact** wildlife such **as** migratory birds, small mammals, and reptiles by increasing predator perches from unburied lines that may lead to increased take of migratory birds and their nests by raptors and corvids; however, impacts of predator perches could be minimized on a site-scale by use of perch deterrents on poles."

Page 4-56: "Generally, these areas include habitats that are dominated by grasses and shrubs **rather** than by trees."

Page 4-57: "However, restrictions to development on BLM lands might push development onto **state, tribal or** private land, which could result in indirect **impacts** as described under Nature and Types of Effects."

Page 4-58: "Under Alternative 3, all PHMA would be managed as ACECs. **It should be noted here that several western state and county resource management plans contain policies and criteria associated with the designation of ACECs and that proposed ACECs must be evaluated, pursuant to FLPMA, for consistency with these state and local plans.**

4-61, Wild Horse and Burro Management: There is a mismatch between the language outlined here and the language in the tables above for Alternative 5. This section discusses management to the "low end" of AML, whereas the language in the table discusses only management to established AML. Request clarification regarding which will apply.

Page 4-73: "Increasing the acres subject to NSO **in** Alternative 4 compared with Alternative 1 would reduce the HMA acres affected and potential for impacts as described in Nature and Types of Effects."

Page 4-74: "Because the presence of GRSG HMAs would not affect whether an area is available for livestock grazing (except in Oregon key RNAs) and existing areas designated would be maintained as available or unavailable for livestock grazing, impacts from livestock grazing management would be ~~the~~ similar to those described for Alternative 1."

Page 4-74: "For example, in HMAs, livestock grazing would be managed ~~to~~ toward meeting land health standards**,** the GRSG habitat objectives, avoid direct adverse impacts to key GRSG habitats from range improvements, and employ grazing management strategies that avoid concentrating livestock on key GRSG habitats during key seasons."

Page 4-78: "Collectively, these GRSG conservation management actions would increase mitigation requirements for land use authorizations. This would result in more complex project designs, potentially excluding infrastructure placement in the most cost-effective or environmentally suitable locations and potentially resulting in overall greater development costs. A corresponding effect could be a reduction in the number of authorization applications for activities and longer, more complicated review periods for those that are proposed in GRSG habitat." **These ROW restrictions run counter to the Biden Administration's climate goals to *"reduce greenhouse gas emissions 50-52 percent below 2005 levels in 2030, achieve a carbon pollution-free electricity sector by 2035, and achieve net-zero emissions by no later than 2050"* (see Executive Order #14082). Further, these restrictions would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will traverse 732 miles at a total cost of about $3 billion, or about $4.1 million per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/). These restrictions will add millions to the cost of new facilities and drive up electric bills for all Americans.**

Page 4-79: "Managing habitat as exclusion areas for utility-scale wind and solar energy ROW development would eliminate the BLM's ability to accommodate any new wind or solar energy demand on that portion of GRSG habitat. This would shift the burden to adjacent non-federal lands that do not have the siting requirements or mitigation standards and could potentially increase costs. ROW exclusions would also inhibit development on adjacent private and state land where transmission infrastructure would be needed across BLM-administered lands." **The ROW restrictions in Alternative 3 run counter to the Biden Administration's climate goals to *"reduce greenhouse gas emissions 50-52 percent below 2005 levels in 2030, achieve a carbon***

pollution-free electricity sector by 2035, and achieve net-zero emissions by no later than 2050" **(see Executive Order #14082). Further, Alternative 3, and to a lesser extent, other alternatives, would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will traverse 732 miles at a total cost of about $3 billion, or about $4.1 million per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/). Designating all habitat as PHMA and then forcing power lines to avoid PHMA under Alternative 3 will add millions to the cost of new facilities and drive up electric bills for all Americans.**

Page 4-80: "Closing areas within GRSG habitat to fluid mineral leasing would directly impact the fluid minerals program by prohibiting the development of those resources on federal mineral estate." **The negative economic impacts of this action will be substantial for federal, state, tribal and local governments. Please refer the reader to the applicable section of the socioeconomic analysis for further information.**

Page 4-84: "Overall, a determination of the extent to which increased costs and decreased efficiency would affect fluid minerals development is a function of project- and site-specific considerations and of market forces at the time. However, it is possible that some well pads, access roads, pipelines, and other facilities would be affected to the extent that marginal projects are economically nonviable, reducing the number of future oil and gas wells to an extent that may be considered significant at the local, state, or regional levels." **Creating these obstacles to fluid mineral development is not wise during this time of high energy prices. The State is concerned that the BLM, through these proposed regulations and others, is picking winners and losers among companies and technologies (favoring wind and solar energy over fluid minerals) at a time when fluid minerals, including geothermal, are very important for our economy and to maintain our lifestyles.**

The State is concerned that the BLM may cause unintended harm by making it more difficult to lease federal lands for fluid mineral development. Shifting fluid mineral development off remote federal lands will put more development pressure on state, tribal, and private lands, where the impacts on rural citizens and environmental justice communities will be greater.

Pages 4-86 and 4-87: " Under Alternative 1, 11,296,800 acres, or 44 percent of planning areas, would remain closed to geothermal leasing. This includes 2,832,200 acres with moderate to high geothermal potential (32 percent of the moderate to high geothermal potential acres in the decision area)." "The uncertainty wrought by this limitation could decrease the value of any future lease, disincentivize geothermal energy development in the western United States, and could affect the ultimate scope of rights authorized under any lease offered in the future." **The geothermal industry has the potential to become a powerhouse of U.S. economic growth, with particular benefits for rural communities. In addition, the geothermal and oil and gas industries share many similarities, presenting an opportunity to transition a skilled workforce as well as best practices from fossil fuels to clean energy, and help communities**

historically impacted by fossil fuel production and use transition to clean energy. The limitations imposed to protect GRSG habitat would have the unintended consequence of limiting development of the promising renewable geothermal energy resource.

Page 4-93: "Any exception must have ~~to~~ **the** concurrence of the state wildlife agency and the USFWS."

Page 4-95: "In areas with development potential for oil and gas resources, closing PHMA to leasing would result in a reduction in oil and gas development and production as described under Nature and Type of Effects." **These restrictions under Alternative 3 are unacceptable to the State.**

Page 4-95: "State specific changes for Colorado**,** and Oregon **and Wyoming** are discussed below."

Page 4-96: "Impacts on fluid minerals under Alternative 5 would **be** less than those described for Alternative 4 because fewer acres would be subject to an NSO stipulation…"

Page 4-96: "Closing an area to non-energy solid mineral leasing would directly impact non-energy solid leasable minerals to the extent such minerals are known to exist by removing the possibility **of** any such mineral resources in that area from being accessed and extracted."

Page 4-97: "Under Alternative 1 most of the PHMA and IHMA in the planning area is closed to new leasing of nonenergy leasable minerals but states can consider expansion of existing leases." **The BLM leases certain solid minerals such as phosphate, sodium, potassium, sulphur, and gilsonite on public and other Federal lands. In addition, some hardrock minerals, depending on their location, may be considered leasable. Most of the minerals leased under this program are used to make fertilizer or feed stock (mineral supplement for livestock) or have other industrial processes (see: https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/nonenergy-leasable-materials. These nonenergy leasable materials are of significant importance for a variety of industrial applications. The BLM should be very cautious to not impose GRSG habitat protections in a manner that will further cut domestic production of phosphorous, trona, gilsonite, and other non-energy leasable minerals and increase our nation's reliance on foreign sources of these minerals.**

Page 4-99: Impacts in Utah: "Based on the disturbance cap and these other restrictions, it is unlikely that the existing phosphate and gilsonite mines could expand or that new phosphate or gilsonite mines would be approved on federal mineral estate in the decision area." **The BLM should not enact management restrictions in Utah that make it difficult to continue providing needed non-energy leasable minerals, such as phosphate and gilsonite, to the marketplace.**

Page 4-100: "Restricting access to phosphate could hamper the production of fertilizer products needed to produce food." **The BLM should not enact measures that would jeopardize the nation's fertilizer and food supply.**

Page 4-102: "Under Alternative 3 all federal mineral estate in the federal mineral estate decision area (4,008,600 acres) would be closed to new prospecting and exploration and leasing. This allocation decision would impact gilsonite, phosphate, and sodium. New leases to expand existing mines for these minerals also would not be permitted." **These restrictions under Alternative 3 are unacceptable to the State.**

Page 4-110: "If demand for mineral materials could not be met by pits operated on federal lands, pits could be moved onto private or state lands where resources exist, this would generally increase costs associated with road construction and maintenance and other uses conducted by state, county and local governments which are able to develop federal mineral materials free of charge under free use permits." "In that case, the impacts of mining (such as noise, dust and truck traffic) could be shifted to areas where such impacts would be a nuisance to farmers and residential areas." **For these reasons, it is important to state and local governments that the BLM select an alternative (other than Alternative 3) that provides maximum flexibility and minimal impacts to mineral materials mining activities in the state and not shift the impacts of mineral materials mining from federal lands onto environmental justice communities.**

Pages 410-411: "In areas where closed but with an exception for expansion of existing pits impacts on both private users and state, county and local governments would likely be reduced in the short term as these users could continue using existing sources, but if resources at and around existing locations are exhausted as is likely at some locations in the longer term." **This sentence fails to state the consequences when resources do not exist around existing locations and expansion is not feasible.**

Page 411: "However, in many cases access ~~needed is~~ to a mineral material development is included as part of the permitted operational area and as a result would not need a separate ROW permit."

Page 411: "Alternatives requiring restoration of salable mineral pits in HMA that are no longer in use, to meet GRSG habitat conservation objectives could depending on application, reduce the availability of salable minerals in some cases, for example if a pit with a history of only being used once every few years were considered no longer in use and closed for restoration it would no long**er** be available."

Pages 4-116, 4-117, 4-118: "In Utah, the BLM anticipates differing effects for ~~this~~ oil shale and tar sands."

Page 4-119: "As another group of large grazing ungulates, wild horses and burros, have the capability of overutilizing vegetation, causing degradation of soil and vegetative resources as described for livestock grazing. Closing ACECs to livestock grazing could help protect relevant and important values by eliminating soil and vegetation disturbance associated with livestock grazing; however, this could also increase the risk for wildfire due to increased fuel loads." **Rather than closing livestock grazing in ACECs (since livestock grazing is managed to meet or make progress toward land health standards), the BLM should instead focus on bringing**

wild horse and burro populations down to appropriate management levels in wild horse and burro herd management areas.

Page 4-119: "Identifying ACECs as ROW exclusion or avoidance areas would protect relevant and important values by reducing (for avoidance areas) or eliminating (for exclusion areas) impacts from development requiring a ROW permit. Such developments include utilities, access roads, and renewable energy projects." **During the planning of recent transmission line projects in Utah and elsewhere in the West (such as Energy Gateway South and TransWest Express) and during the current consideration of amending the Section 368 corridors, the proliferation of ACECs, conservation easements and other special designations creates pinch points and makes it very difficult to find acceptable routes. Adopting an alternative that calls for ACECs to protect GRSG habitat will compound this problem and hamper the nation's ability to expand the power grid to accommodate renewable energy generation. This problem will worsen as the BLM continues to permit wind and solar energy development projects on federal lands.**

Page 4-123: "This action would allow projects to exceed the disturbance cap; however, in so doing, it could result in voluntary habitat improvement projects that could change vegetation conditions in the project area to shift away from a vegetation community more dominated by trees to one more dominated by grasses and shrubs, which could **positively** impact relevant and important values as described in the Nature and Type of Effects."

Page 4-124: "New infrastructure development would be substantially limited as compared with Alternatives 1 and 2. All PHMA would be excluded from new ROW authorizations. New linear ROWs would be allowed only in designated ROW corridors." **Designating all habitat as PHMA and then forcing power lines to avoid PHMA under Alternative 3 will add millions to the cost of new facilities and drive-up electric bills for all Americans. Further, these restrictions would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will traverse 732 miles at a total cost of about $3 billion, or about $4.1 million per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/).**

Page 4-129: " These secondary impacts on product prices and availability can be just as important for local economies as the direct impacts, especially in areas where trona extraction plays a large role in the ~~economic~~ **economy**, such as in Wyoming…"

Page 4-130: "Economic and social impacts from changes in nonenergy leasable minerals would have larger impacts in regions that are reliant ~~of~~ **on** leasable mineral sectors compared with the reliance of other sectors.

Page 4-136: "As noted in the Wild Horses and Burros section, the timeline for implementation of any management changes would be impacted by **litigation,** congressional funding and the associated wild horse management including gathers, storage capacity, and adoption rate."

Litigation must be recognized as an impact; especially in light of a March 30, 2024 U.S. District Court decision that will limit wild horse and burro gathers (see: https://friendsofanimals.org/wild-horses-in-nevada-utah-get-reprieve-thanks-to-foas-court-victory/).

Page 4-138: "Over the long term, if restrictions continue, there could be impacts on the availability of meat and household products." **The analysis mentions increased costs of meat and household products but does not adequately address the likely increased costs of transportation fuels, home heating fuels, and electricity if overly restrictive GRSG habitat protection measures are enacted. These are also "staples" that low-income people must purchase regardless of price; disproportionately and severely impacting their budgets.**

Page 4-139: "On annual average, oil and gas production revenue and well development expenditures in the analysis areas is expected to result in a range of about 73,000 to 94,000 total jobs (from 28,000 to 34,000 direct jobs in the drilling oil and gas wells sector and the oil and gas extraction sector), $5.8 billion to $7.6 billion in total labor income (from $3.0 billion to $3.8 billion in direct labor income), and about $27.6 billion to $34.2 billion in economic output (from $19.0 billion to $22.8 billion in direct economic output) combined across 8 states." **This data is artificially low and needs to be revised to realistic numbers. In Utah alone, approximately 77,970 jobs and $5.8 billion in labor income can be attributed to the petroleum industry. According to a recent study prepared for the Utah Petroleum Association by PricewaterhouseCoopers LLP (https://utahpetroleum.org/wp-content/uploads/2023/04/UPA-Economic-and-Fiscal-Impact-Final-Report_04112023.pdf):**

"At the state level, the report finds that each direct job in the petroleum industry supports approximately two additional jobs elsewhere in Utah's economy, resulting in an employment multiplier of three. Combining the direct, indirect, and induced impacts, the industry's total impact on employment is projected to grow by 14,570 jobs between 2021 and 2024, from 63,400 full-time and part-time jobs in 2021 to 77,970 in 2024, a 23 percent increase. Counting direct, indirect, and induced impacts, the industry's total impact on state labor income (including proprietors' income) is projected to grow from $4.3 billion in 2021 to $5.8 billion in 2024, a 36 percent increase. The industry's total impact on Utah's value added (i.e., contribution to GDP) is projected to grow from $10.2 billion in 2021 to $13.4 billion in 2024, a 31 percent increase. For the 2020-2024 period, the industry's direct and total labor income impacts are estimated to total $9.0 billion and $24.1 billion, respectively. The impacts quantified in this analysis are limited to Utah and do not include any spillover effects on other states or spillover effects on Utah due to the industry's economic activities outside of Utah. Including such spillover effects would have significantly increased the overall impact of the industry on Utah. For the 2020-2024 period, the industry's direct and total value-added impacts are estimated to total $30.9 billion and $55.4 billion, respectively."

Page 4-141: "On annual average, oil and gas production revenue and well development expenditures in the Utah analysis area is expected to result in about 7,000 total jobs (about 2,000 direct jobs in the drilling oil and gas wells sector and the oil and gas extraction sector), $454 million in total labor income (about $162 million in direct labor income), and about $2.5 billion in

economic output (about $1.6 billion in direct economic output) throughout the state. Most of the impacts on employment and economic output from oil and gas production revenue and well development expenditures would occur in the analysis area, accounting for about 86.7 percent of the total economic output." **These numbers are artificially low. More accurate data can be found at: https://utahpetroleum.org/wp-content/uploads/2023/04/UPA-Economic-and-Fiscal-Impact-Final-Report_04112023.pdf). This will require an adjustment of the numbers in all alternatives.**

Page 4-142: "Under Alternative 1, the total royalty revenue generated from oil and gas production in Utah would be about $186 million. The Utah severance tax revenue is expected to be about $55.7 million, under Alternative 1, and the conservation fee is expected to generate about $223,000. Additionally, oil and gas production could generate about $55.6 million across the analysis area in county revenues from ad valorem taxes. These revenues that are disbursed to counties would continue to support local public services." **These numbers are artificially low. More accurate data can be found at: https://utahpetroleum.org/wp-content/uploads/2023/04/Oil-and-Gas-Sector-Impact-Utah_Final.pdf. This will require an adjustment of the numbers in all alternatives.**

Page 4-158: "On annual average, oil and gas production revenue and well development expenditures in the analysis area for 8 states combined is expected to result in about 25,000 to 36,000 fewer total jobs (about 11,000 to 14,000 fewer direct jobs), about $2.0 million to $2.9 billion less in total labor income (about $1.2 million to $1.6 billion less in direct labor income), and about $9.2 billion to $12.8 billion less in economic output (about $6.5 billion to $8.5 billion less in direct economic output) than under Alternative 1." **These numbers are artificially low; but even if they were correct, this decrease in jobs, labor income, and economic output is unacceptable to the State. More accurate data can be found at: https://utahpetroleum.org/wp-content/uploads/2023/04/UPA-Economic-and-Fiscal-Impact-Final-Report_04112023.pdf).**

Page 4-161: "Under Alternative 3, on annual average, oil and gas production revenue and well development expenditures in the Utah analysis area is expected to result in about 700 fewer total jobs (about 200 fewer direct jobs), $47 million less in total labor income (about $17 million less in direct labor income), and about $252 million less in economic output (about $167 million less in direct economic output) across the state compared to development under Alternative 1. The decrease in projected oil and gas activity, under Alternative 3, would result in reductions in tax revenues, compared with Alternative 1. Under Alternative 3, the total royalty revenue generated from oil and gas production in Utah would be about $125 million, which is about $60.4 million less than under Alternative 1. The Utah severance tax revenue is expected to be about $50.0 million, which is about $5.6 million less than under Alternative 1. The conservation fee is expected to generate about $200,000, which is about $22,000 less than under Alternative 1. Additionally, oil and gas production could generate about $50.0 million across the analysis area in county revenues from ad valorem taxes, which is about $5.6 less than under Alternative 1. The reductions in tax revenues could put strain on local governments' budgets and could impact public services that are offered to the communities." **These numbers are artificially low; but even if they were correct, this decrease in tax revenue is unacceptable to the State. More**

accurate data can be found at: https://utahpetroleum.org/wp-content/uploads/2023/04/Oil-and-Gas-Sector-Impact-Utah_Final.pdf and https://utahpetroleum.org/wp-content/uploads/2023/04/UPA-Economic-and-Fiscal-Impact-Final-Report_04112023.pdf).

Page 4-162: "Closures in land to new nonenergy mineral leasing could result in increases in prices in the short term of household products, such as products made from trona, as discussed in Nature and Type of Effects, due to an increase in cost that would likely occur to mining operators." **The analysis fails to mention the impacts associated with removing other types of nonenergy mineral materials from the marketplace, such as phosphate, sodium, potassium, sulphur, and gilsonite.**

Page 4-164: "These BLM-management decisions could result in operators relocating development of wind and solar facilities to other non-federal locations." **If the federal government is going to continue promoting renewable energy development, such as wind and solar, the federal government must provide sufficient sites for such development, rather than relying on state, tribal and private property owners to do so. Alternative 3 would make it even more difficult to establish renewable energy generation and transmission facilities on and across BLM land.**

Page 4-169: "Under Alternative 3, on annual average, livestock grazing on allotments where PHMA accounted for at least 15 percent of the acreage in the Utah analysis area is expected to result in about 90 fewer total jobs (54 fewer direct jobs), $6.2 million less in total labor income (about $4.6 million less in direct labor income), and about $16.9 million less in economic output (about $10.8 million less in direct economic output) across the analysis area, compared with Alternative 1." **Does this analysis account for data from the 2022 U.S. Census of Agriculture? Looking at Table 3-11 in Appendix 13, it appears that 2012 data was used. The 2022 census data; available at: https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_1_State_Level/Utah/st49_1_013_014.pdf shows 2022 cattle and calf sales in Utah of $427,502,000. Even considering the 15 percent figure, it appears that the loss in economic output could be much greater than indicated under Alternative 3.**

Page 4-170: "These impacts would disproportionately affect low-income environmental justice populations, because marginal increases in prices of meat and household products make up a larger percentage of the disposable income from low-income households than the general public and low-income households tend to have fewer alternatives if meat and household products become unavailable." **The analysis mentions increased costs of meat and household products, under Alternative 3 but does not adequately address the likely increased costs of transportation fuels, home heating fuels, and electricity if restrictive GRSG habitat protection measures are enacted. These are also "staples" that low-income people must purchase regardless of price; disproportionately and severely impacting their budgets.**

Page 4-180: "By improving landscape resiliency to wildfire and soil degradation, protection of the GRSG habitat would result in a general improvement in air quality." **For these benefits to occur, the BLM will need to adopt an alternative that allows for active management of the**

landscape, including prescribed fire, fuel breaks, livestock grazing, and mechanical vegetation treatments. For example, if Alternative 3 were selected, proper livestock grazing would be removed and resiliency to wildfire would be diminished.

Page 4-180: "By restricting land uses that may emit air pollutants, protection of GRSG habitat would result in a general improvement in air quality." "Limiting oil and gas leasing and resultant development with the purpose of reducing disturbance to GRSG and their habitat could reduce air pollutant emissions or at a minimum, move sources to a different location." **Limiting oil and gas leasing on BLM land may not slow and may actually shift oil and gas development to state, tribal and private lands, which may be in close proximity to BLM lands (due to the "checkerboard" land patterns in many areas of the West). For example, in Utah, 37.8% of active oil wells are on tribal land, 32.4% are on federal land, 21.1% are on private land, 5% are on state land and 4% are on multiple lease types (see: https://oilgas.utah.gov/wellCounts.php. Since air emissions do not respect jurisdictional boundaries, it is unlikely that reducing disturbance to GRSG and their habitat on BLM lands will significantly reduce air pollutant emissions as stated above.**

Page 4-186: "ACECs under Alternative 6 would restrict some uses, in accordance with the ACEC boundaries and restrictions under Alternative 3, which could reduce potential sources of pollutants." **Limiting land uses in ACECs may actually shift such land uses to state, tribal and private lands, which may be in close proximity to BLM lands (due to the "checkerboard" land patterns in many areas of the West). Since air emissions do not respect jurisdictional boundaries, it is unlikely that reducing such land uses will significantly reduce impacts on air quality as stated above.**

Page 4-186: "Protection of GRSG habitat may **not reduce GHG emissions but may simply** move sources of GHGs to different locations.

Page 4-186: "Conservation activities to this effect can be expected to increase vegetation cover (e.g., sagebrush habitat) and enhance the soil, thereby increasing the amount of carbon that can be sequestered from the atmosphere and stored in the landscape in plants and organic soil.[22] **However, if conservation on BLM land shifts development to state, tribal and private land, the shift may result in no net carbon sequestration gains to the overall landscape."**

Page 4-187: "Impacts on GHG emissions and carbon sequestration from changes in livestock grazing would continue to largely be determined by variations in AUMs and site-specific management actions that involve surface-disturbing actions. Management actions that would continue to indirectly reduce impacts on climate change from changes in livestock grazing include managing for riparian vegetation, applying the principles of prescriptive livestock grazing to control time and timing of grazing during the hot season, and retiring grazing privileges on a voluntary basis." **Impacts from wild horses and burros need to be addressed here as well or does the BLM plan to do nothing to address the GHG and carbon sequestration impacts of these species?**

Pages 4-190 & 4-191: "Due to a reduction in the level of use from added restriction under Alternative 3, fluid, salable, and nonenergy mineral development, renewable energy development, livestock grazing, and most other major surface disturbing activities would result in the least amount of GHG emissions and surface disturbance **on BLM land**, compared with all alternatives. **However, such restrictions could shift such development and associated impacts to state, tribal or private lands, where the GHG emissions and surface disturbance would still occur."**

Page 4-191: "Under Alternative 6, impacts on GHG emissions and carbon sequestration would be similar to Alternative 5. ACECs under Alternative 6 would restrict some uses, in accordance with the ACEC boundaries and restrictions under Alternative 3, which could reduce surface disturbance and potential sources of GHGs **or merely shift them to non-federal lands**."

Page 4-193: "Existing ROW corridors are preferred for collocation of new ROWs but could not be widened more than 50 percent greater than the original footprint." **Here and in other applicable alternatives, it should be noted that limiting the widening to 50% of the width existing may not be wide enough to safely accommodate a parallel transmission line (if a tower were to fail, the ROW must be wide enough to prevent such failure from impacting the parallel line).**

Page 4-195: "The inability to site ROWs in PHMA could lead to longer ROW routes to bypass closed areas. Longer routes would increase surface disturbance and other impacts of ROW sitting on soil productivity and erosion outside of PHMA and may result in increased impacts on soil productivity and erosion on adjacent **state, tribal or** private lands."

Page 4-195: "Under Alternative 3, PHMA would be ROW exclusion for wind and solar energy development. Prohibiting wind energy development would eliminate impacts on soil productivity and erosion from changes in land protected from or open to this type of surface-disturbing activity in these areas." **However, these prohibitions could result in the shifting of surface-disturbing activity and impacts on soils to state, tribal or private lands."**

Page 4-198: "Therefore, the greater the amount of acreage restricted from a land disturbing use, the greater the protection of impacts from surface disturbing activities afforded to water resources." **However, water flows across jurisdictional boundaries and such restrictions could merely shift such surface disturbance and associated impacts on water resources from BLM lands to state, tribal or private lands."**

Page 4-200: "In turn, these management actions would continue to help minimize local impacts on water resource conditions from changes in livestock grazing, which would also continue to help minimize range-wide impacts for long-term benefits to water resource conditions as described in the Nature and Types of Effects." **Why no mention here and in the other alternatives of the impacts of overpopulated wild horse and burro management areas on water quality?**

Page 4-200: "These various restrictions **on** land protected from or open to surface disturbing activities within PHMA and GHMA would continue to help reduce impacts on water resource conditions as described under the Nature and Types of Effects." **However, water flows across jurisdictional boundaries and such restrictions could merely shift such surface disturbance and associated impacts on water resources from BLM lands to state, tribal or private lands."**

Page 4-201: "Existing ROW corridors are preferred for collocation of new ROWs but could not be widened more than 50 percent greater than the original footprint. These measures would continue to reduce negative impact to water resource conditions from surface-disturbing impacts described in the Nature and Types of Effects." **Here and in other applicable alternatives, it should be noted that limiting the widening to 50% of the width existing may not be wide enough to safely accommodate a parallel transmission line (if a tower were to fail, the ROW must be wide enough to prevent such failure from impacting the parallel line). It should also be noted that water flows across jurisdictional boundaries and BLM restrictions could merely shift surface disturbance, such as ROW corridors and associated impacts on water resources from BLM lands to state, tribal or private lands.**

Page 4-202: "Compared with Alternative 1, Alternative 3 contains greater restrictions on other resources and would most greatly reduce the potential for impacts on water resource conditions as described under the Nature and Type of Effects." "Alternative 3 would be more protective of water resource conditions from impacts related to changes in land protected from or open to livestock grazing compared with Alternative 1." **While these statements are partially true, Alternative 3 would ban livestock grazing, which could make BLM lands more susceptible to wildfire, which could negatively impact water resources as a result.**

Page 4-203: " However, the inability to site ROWs in PHMAs could lead to longer ROW routes to bypass closed areas. Longer routes would increase surface disturbance and other impacts of ROW siting on water resource conditions outside of PHMA and may result in increased impacts on water resource conditions on adjacent private lands." **Alternative 3 would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will traverse 732 miles at a total cost of about $3 billion, or about $4.1 million per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/). Designating all habitat as PHMA and then forcing power lines to avoid PHMA under Alternative 3 will add millions to the cost of new facilities and drive up electric bills for all Americans.**

Page 4-208: "However, as described in Section 2.9.7, livestock grazing is managed to meet or make progress toward land health standards, thus reducing the likelihood of these effects." **Since the BLM mentions livestock management here, it should be noted here how the BLM plans to manage overpopulations of wild horses and burros to address their impacts on cultural resources.**

Page 4-210: "Under Alternative 1, **in** all states where wild horses and burros overlap with GRSG habitat**, the BLM** would continue to manage wild horse and burro populations within established appropriate management levels (AMLs) and incorporate GRSG objectives into wild horse and burro management."

Page 4-213: "However, the exclusion of ROW development in PHMAs could lead to creation of longer ROW routes to get around closed areas. Longer ROW routes would increase potential for ground-disturbing activities, changes to site setting, and increases in access outside of PHMAs." **Alternative 3 would hamper the nation's ability to site new transmission and distribution lines necessary to connect anticipated solar and wind power generation facilities to the grid and deliver power to customers. Construction of major transmission lines is very expensive. The TransWest Express power line will traverse 732 miles at a total cost of about $3 billion, or about $4.1 million per mile (see https://www.power-technology.com/projects/transwest-express-transmission-project-usa/). Designating all habitat as PHMA and then forcing power lines to avoid PHMA under Alternative 3 will add millions to the cost of new facilities and drive up electric bills for all Americans.**

Page 4-216: "All alternatives allow for the appropriate tribal governments to consult on a case-by-case basis on undertakings on BLM-administered **land** that could affect Native American concerns."

Page 4-218: "The additional exception criteria for ROW and renewable energy in NV/CA could increase the potential for impacts **to** cultural resources and traditional uses from surface-disturbing activities, though the criteria would likely avoid impacts to GRSG."

Page 4-221: "Under Alternative 5, impacts to tribal interests would be similar to Alternative 4 with the additional consideration of adjustments to HMAs to balance multi-use opportunities, which has the potential **to** produce impacts on tribal interests since HMAs would cover a smaller area under Alternative 5."

Page 4-222: "In addition, range improvements reduce the overall appearance of naturalness over the long term **and** could result in short-term impacts on solitude and naturalness due to human presence, noise, and disturbance during installation."

Page 4-222: "Where areas are unavailable for livestock grazing, lands with wilderness characteristics that overlap with these areas would experience a reduction of these impacts." **However, removing livestock grazing exposes LWC to fuel build up and increased risk of wildland fire.**

Page 4-223: "Due to screening criteria, conditions for development, and required mitigation, applicants may find it easier to ~~cite~~ **site** their development outside of GRSG habitat, thereby leading to some additional protection of lands with wilderness characteristics within GRSG habitat. **Moving ROWs out of GRSG habitat and LWC could merely shift impacts to other areas and drive-up costs of providing needed infrastructure.**

Page 4-224: "Management actions under Alternative 3 would have the overall greatest potential to maintain wilderness characteristics on lands with wilderness characteristics within PHMA when compared to all other alternatives." **However, such management actions could drive up the cost of providing needed infrastructure and increase the wildfire risk in LWC areas.**

Page 4-226: "Under all alternatives, disturbance caps which restrict the construction of recreation infrastructure would decrease access for recreation experiences that depend on road and trail development and could inhibit management objectives where developments are part of the desired conditions." **Restrictions on road and trail development may be inconsistent with state and local resource management plans, transportation plans, RS 2477 rights, and trail master plans. The BLM should avoid decreasing access to recreation experiences unless agreed to by state and local authorities.**

Page 4-227: "Therefore, if future recreation **projects** would have the potential **to** exceed the disturbance cap in a particular area, the disturbance cap would have the potential to prohibit the construction of new recreation facilities over the largest area when compared with the other alternatives." **While Alternative 3 would do the most to protect primitive recreation and opportunities for solitude, Alternative 3 would do so at the expense of those who choose to participate in motorized recreation activities or whose physical condition or age does not permit participation in primitive forms of recreation.**

Page 4-229: "The past, present, and reasonably foreseeable future actions that contribute to cumulative impacts on GRSG are summarized in Appendix 14, Table 14-1." **This table mentions the land use plan being prepared for the Grand Staircase Escalante National Monument in Utah but does not mention the land use plan being prepared for the Bears Ears National Monument in Utah. Also, there appears to be no mention of the BLM's grazing policy revisions, which would be part of the cumulative impact on GRSG habitat.**

Page 4-230: "The BLM and other land management agencies authorize livestock grazing in accordance with their regulations (43 CFR Part 4100 for the BLM) and agency policies and guidance." **In 2020, the BLM initiated a revision to its livestock grazing regulations. In November of 2020, the BLM paused the rulemaking process but reinitiated the rulemaking process in mid-2022. The effort is now being characterized as revising the BLM's grazing policy guidance. The impacts of this effort on GRSG should be summarized in this analysis.**

Page 4-232: "Travel management plans typically include seasonal and permanent closures of roads and other mitigation measures **to** reduce impacts to other resources, such as vegetation and wildlife, including GRSG." **It should be noted here that permanent closures are not an option for roads that have RS 2477 rights claimed by the states.**

Page 4-233: "However, exclusion of grazing on BLM-administered lands may intensify grazing use on private lands, which could degrade GRSG habitat in those areas. Alternately, managing PHMA as unavailable for grazing could promote rural subdivisions and thus habitat loss in areas where livestock operators are not able to continue their operations solely on private lands." **The analysis here fails to mention that Alternative 3's exclusion of livestock grazing would make**

BLM lands more susceptible to wildfire, which would negatively impact GRSG habitat and the overall environment as a result.

Page 4-235: "In summary, Alternative 3 would have the most protections for vegetation and habitat within GRSG management areas." **While Alternative 3 would reduce surface disturbance and protect vegetation, the exclusion of proper livestock grazing would increase fine fuels that would put the landscape at greater risk of wildfire.**

Page 4-236: "By making all PHMA unavailable for grazing, Alternative 3 would have the greatest contribution to cumulative effects through a potential increase in fine fuels that could influence **more frequent and** large**r**-scale wildfire**s**."

Pages 4-240 and 4-241: "Alternative 3 would make all PHMA unavailable to livestock grazing. The BLM would have to construct and maintain a large amount of fencing, particularly in areas with mixed surface ownership, to effectively make grazing unavailable. **Such fencing increases the risk of GRSG collisions.** Exclusion of grazing on BLM-administered lands may intensity **intensify** grazing use on private lands or cause operators to reduce the scale of their operations on private lands. This alternative would have the greatest cumulative adverse effects on livestock grazing than any of the other action alternatives **and would also result in fine fuel buildup that would put the landscape at a greater risk of wildfire**."

Page 4-241: "~~This alternative~~ **Alternative 3** would have the greatest cumulative adverse effects on lands and realty authorizations than any of the other action alternatives."

Page 4-242: "Past, present, and reasonably foreseeable future actions and conditions in the cumulative impact analysis area that have affected and will likely continue to affect fluid mineral leasing and development include, past, present, and continued mineral exploration, development, leasing, and management decisions on BLM-administered lands as well as on other federal**, state** and Tribal lands."

Page 4-243: "Closures and surface use restrictions, such as NSO stipulations, could also cause an operator to move to nearby private**, tribal** or state land if similar resources are available and recoverable with no such restrictions."

Page 4-244: "Closures and surface use restrictions could also cause an operator to move to nearby private**, tribal** or state land if similar resources are available with fewer such restrictions, however many states apply management actions to protect GRSG."

Page 4-246: "Alternative 1 recommended the withdrawal of all SFAs, from location and entry under the United States mining laws. This recommendation already occurred in the 2015 Plans and had no impact." **On what basis does the BLM conclude that the withdrawal of SFAs from mineral development had no impact?**

Page 4-247: "If demand for mineral materials could not be met by pits operated on federal lands, pits could be moved onto private**, tribal** or state lands where resources exist, this would generally

increase costs associated with road construction and maintenance conducted by state, county and local governments which are able to develop federal mineral materials free of charge under free use permits."

Page 4-249: "This erosion can transport soil particles **and other debris** into water bodies, potentially affecting water quality and aquatic habitats."

Page 4-250: "Alternative 5 would have similar, though slightly greater contribution to cumulative effects than Alternative 3 because ACECs would be designated but protective measures for GRSG would be less stringent, which could allow for some degradation of relevant and important values in some areas." **This sentence needs to be clarified because Alternative 5 will not include ACECs, as suggested here.**

Page 4-252: "The predominant mining method for mineral materials is surface mining; therefore, restrictions on surface-disturbing activities would effectively close or limit mineral material mining in the subject areas ~~to~~ unless an exception is provided."

Page 4-252: "If feasible mineral materials extraction could relocate to nearby areas; however, this would likely result in increased costs associated with transportation or fees, if operations ~~is~~ **are** moved to private or state lands."

Page 4-253: "However, labor income for employment in industries associated with renewable energy development and operations tends to be lower than labor income for employment **in** mining industries." **In addition to lower wages, renewable energy projects generate fewer jobs than other mining industries (these low job levels are documented in the BLM's Utility Scale Solar PEIS).**

Page 4-253: "These impacts include changes in access to **and cost of** products and resources, values from open spaces, values from wildlife species including GRSG."

Page 4-253: "Potential for severe wildfire**, particularly under Alternative 3,** could result in damage to GRSG habitat, which could result in cumulative impacts on access to nonmarket values associated with GRSG and GRSG habitat, such as values from cultural and subsistence resources and nonuse values."

Pages 4-256 and 4-257: "According to the modeled ambient air pollutant concentrations from BLM's 2032 Western US Photochemical Air Quality Modeling Study (Ramboll 2023), with the exception of particulate matter, circa 2032 cumulative emissions are not expected to result in exceedances of NAAQS for the portions of the planning area ~~the~~ **that** overlap with the model's study area (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming only)."

Page 4-257: "Therefore, Alternative 3 would result in the lowest cumulative air quality impacts among the alternatives." **This may not be totally true as Alternative 3 would prohibit livestock grazing and other forms of active vegetation management, which could make GRSG habitat more prone to wildfire, which is a major source of air emissions.**

Page 4-258: "Climate change trends, particularly the increasing trend in occurrence and severity of drought conditions affecting carbon sequestration, and the increasing trend **in** uncontrolled large wildfires affecting GHG emissions can further exacerbate impacts to climate change."

Page 4-259: "ROW MLB Plans can help assure surface disturbance activities are **managed appropriately** within or outside of the planning area."

Page 4-260: "However, **Alternative 3 prohibits** ~~the lack of~~ **active** vegetation management practices **and livestock grazing, which** can effectively reduce fuels, thereby diminishing the potential for increased wildfires**.** ~~that might otherwise~~ **Consequently, Alternative 3 may** contribute to decreased soil productivity and increased erosion."

Page 4-260: "Vegetation and habitat management projects can help to improve the condition of water resources ~~conditions~~ by improving soil productivity and plant growth and decreasing erosion which can lead to sedimentation and contamination."

Page 4-260: "This can lead to erosion, as water and wind can more easily remove the compacted **barren** soil."

Page 4-261: "For example, this alternative could prohibit the construction of new roads or pipelines in sensitive areas. It could also require that development activities be carefully managed to minimize soil disturbance. This would help to protect water resources conditions.~~"~~ **However, Alternative 3 prohibits active vegetation management practices and proper livestock grazing, which can effectively reduce fuels, thereby diminishing the potential for increased wildfires. Consequently, Alternative 3 could also contribute to decreased soil productivity and increased erosion, which would have detrimental impacts on water resources and water quality."**

Page 4-263: "Residential development and associated recreation opportunities and access on adjacent public lands, both within and near the planning area, will continue to be a likely avenue for adverse effects on resources and areas of tribal interest." **This finding is questionable as the BLM does not allow residential development on its lands and most BLM land in the West is bordered by state or tribal land as opposed to private land.**

Page 4-265: "Management actions under Alternative 3 would provide the overall greatest potential to maintain wilderness characteristics on lands with wilderness characteristics units within PHMAs when compared to all other alternatives due to the closure of fluid, salable, and non-energy mineral leasing, ROWs being managed as exclusion, and PHMAs being unavailable for livestock grazing.~~"~~ **However, these management actions could lead to a build up of fuels and increase the risk of wildfire in WSAs. Wildfire would make affected WSA areas less desirable for primitive recreation."**

Page 4-266: "Alternative 3 would reduce the cumulative impacts in the planning area on recreation since Alternative 3 has the greatest restrictions on other resource uses, such as season**al**

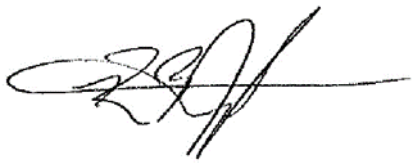
restrictions on fluid mineral development. This would reduce the resource conflicts with recreation in PHMA, IHMA, and GHMA that occur as ~~resources~~ **resource uses** that could lead to resource conflict with recreation would otherwise continue in the project area. These restrictions would reduce the degradation of physical setting characteristics in the planning area, which would enhance the recreational user experience more than Alternative 1**.** Compared to Alternative 1, Alternative 3 would also have the greatest acres **in** PHMA. ~~Which~~ **This** would subject the greatest acreage to disturbance caps. Therefore, if future recreation would have the potential **to** exceed the disturbance cap in a particular area, the disturbance cap would have the potential to prohibit the construction of new recreation facilities over the largest area when compared with the other alternatives.~~"~~ **The restrictions of Alternative 3 would have the most adverse impacts on motorized recreation of the alternatives analyzed."**

Page 4-267: "Such past, present, and reasonably foreseeable future actions and conditions within the cumulative impact analysis area that have affected and will likely continue to affect transportation and travel include restrictions in GRSG HMAs on mining and mineral exploration and development, other planning efforts, such as those for Gunnison sage-grouse and big game in Colorado, and continued maintenance of federal and state highways **and county roads** which provide arterial connections to BLM system roads."

Page 4-267: "Increasing development and population growth have increased demand ~~and~~ **for the** construction **and maintenance** of roads."

The State appreciates the cooperative relationship it has with the BLM and the consideration of the concerns outlined herein. Please direct any written correspondence to the Public Lands Policy Coordinating Office at the address below or call to discuss any questions or concerns.

Sincerely,



Redge B. Johnson
Director

Shields
922 N 8
Grand Jct Co 81501

BLM Utah State Office
Attn: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, Ut. 84101

Greetings administators, I'd like to comment on the RMPA for Greater Sage Grouse. To me it seems Alternative 3 provides the best outcome for greater Sage-grouse. We know that other species such as elk and mule-deer would also benefit from the protections provided in Alt-3.

While I am an avid backpacker/hikes and use BLM lands often, I am willing to be inconvenienced to protect public lands.

Planning for the greater good and biotic health of the region makes more sense than meeting short-term goals of profit and exploitation.

Thank you,

Merilee Shields
922 N 8th St
Grand Junction, Co.
81501

Shields
922 N 8
Gjct Co 81501

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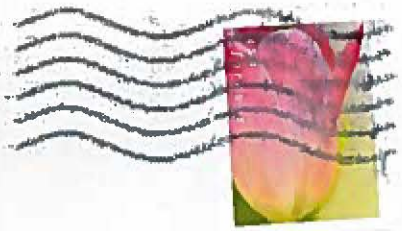

BLM UTAH STATE OFFICE
ATTN: HQ GRSG RMPA
440 WEST 200 SOUTH, #500
SALT LAKE CITY, UT 84101

84101$1434

Ecosystem Research Group, LLC Inholding of DJ&A

121 Hickory St., Suite 3~Missoula, MT 59807~Telephone: (406) 721-9420~e-mail: erg@ecosystemrg.com

September 3, 2019

Terry Wolf
Washakie County Commissioner
PO Box 260
Worland, WY 82401

Dear Mr. Wolf,

House Bill 54 provides for Wyoming counties to develop and revise county natural resource management plans to help serve as a basis for communicating and coordinating with federal government agencies on land and natural resource management issues. Ecosystem Research Group (ERG) has extensive experience with land and resource management and land use planning throughout the west.

Attached please find our outline for completion of the Washakie County Natural Resource Management Plan as based on the specifications in the Eligibility and Criteria for HB54/HEA22. We feel that we can complete this work as outlined for **$48,414.40**. ERG has provided a scope of work (tasks) that reflect the proposed budget. Many tasks below can be expanded or restricted and the budget adjusted up or down depending on the county's needs, objectives and funding. All of these tasks can be discussed as the project progresses and adjusted or evaluated as necessary. In addition, ERG has provided a brief list of personnel and their qualifications at the end of this proposal that would be involved in the creation of the Washakie County Natural Resource Management Plan.

Best regards,

Gregory Kennett
Senior Advisor

Dessa Dale
Project Manager

May 8, 2024

204 Hill Avenue
Grand Junction, CO 81501

BLM Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

Dear BLM Officials,

I live on the Western Slope of the Rockies in Grand Junction. I adore hiking in the wilderness regularly and on extremely rare occasions we are lucky enough to learn of a population of Greater sage grouse that we can observe.

Unfortunately, the present plan is contributing to the loss of its habitat and populations are not coming back.

I'm urging the Bureau to adopt Alternative 3 with the strongest limits on development of all kinds and ADD 11 million plus acres of ACECs, which has the best outcome for the Greater sage grouse.

Sincerely,
Constance McCrary

CL McCrary
204 Hill Ave
Grand Jct., CO 81501

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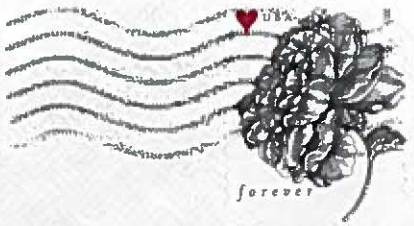

BLM Utah State Office
ATTN: NHQ, GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

8410131434

Zachery Meyer
6018 Cicero Road
Hicksville, OH 43526-9247

May 29, 2024

Sage Grouse Planning Team
BLM Utah State Office, ATTN: HQ GRSG RMPA, 440 West 200 South #500, Salt Lake City, UT 84101

Dear BLM:

As a supporter of Backcountry Hunters & Anglers, the voice for our wild public lands, waters, and wildlife, I commend the Bureau of Land Management's (BLM) efforts to improve greater sage-grouse conservation through the Draft Resource Management Plan Amendment. With approximately 67 million acres of sage-grouse habitat managed by the BLM, the final plans adopted by the BLM must both be durable and able to be readily implemented with the necessary staff and resources in order to effectively support sage-grouse conservation on what represents nearly 50% of the bird's total habitat.

With a sage-grouse population decline of 40% since 2002, and 80% since 1965, it is critical that the conservation of these iconic Western birds is strengthened. The steep decline in sage-grouse populations is correlated with the average rate of loss of more than 1.3 million acres of sagebrush lands each year in the United States. In order to address this, it is necessary to integrate new scientific knowledge and respond proactively to the rapidly evolving conditions across Western sagebrush lands. Once implemented, this planning process will strengthen the health of sage-grouse habitat, in addition to providing benefits for other wildlife such as pronghorn and mule deer whose winter range overlaps significantly with sage-grouse core areas.

I urge the BLM to prioritize the following in their final plan amendment:

* Incorporating the latest science on greater sage-grouse populations, which is necessary to inform the selection of habitat areas and apply meaningful adaptive management.

* Ensuring development is balanced with the need for healthy habitat by directing development impacts outside of Priority Habitat Management Areas.

* Keeping the highest quality sagebrush habitat intact, as science shows that the value these areas provide cannot be replaced.

* Requiring that impacts to sagebrush habitat are offset elsewhere through new conservation projects.

I want to thank you for your commitment to collaborative work with stakeholders across the West that is so critical to ensuring long term conservation for sage-grouse and their habitat on our public lands.

Sincerely,

Zachery Meyer

Zachery Meyer
6018 Cicero Rd.
Hicksville, OH 43526

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BLM Utah State office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

Received
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Bureau of Land Mgmt UTSO

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COLORADO
Department of Agriculture
Conservation Services Division

June 13, 2024

Pat Deibert
BLM National Sage-Grouse Conservation Coordinator
BLM Wyoming State Office
5353 Yellowstone Road,
Cheyenne, WY 82009

Dear Ms. Deibert,

The Colorado Department of Agriculture (CDA) submits the following comments regarding the Bureau of Land Management (BLM) draft Resource Management Plan Amendment (RMPA) and Environmental Impact Statement (EIS) for the Greater Sage-Grouse (GrSG).

CDA's mission is to strengthen and advance Colorado agriculture; promote a safe, high quality, and sustainable food supply; protect consumers; and foster responsible stewardship of the environment and natural resources. It is with this mission in mind that we focus our comments on this RMPA may have on the range livestock industry and natural resources associated with BLM administered federal lands in Colorado. CDA supports properly managed livestock grazing as a congressionally mandated use of federal lands that is vital to the ranching industry and beneficial to wildlife and associated natural resources, and supports the goal of the RMPA, of addressing GrSG declines. We recognize that federal Endangered Species Act listing of this species would likely result in more stringent limitations on grazing permittees than the RMPA, which would be adverse to Colorado's thriving livestock sector.

Comments below are specific to indicated sections of the RMPA-EIS.

Background on Livestock Grazing and GrSG Conservation

It is important for BLM to ground the livestock grazing discussions in the scientific literature indicating that properly managed livestock grazing can be compatible with GrSG conservation. In a synthesis of scientific literature on long-term rest in the sagebrush steppe, Davies et al. (2014)[1] found that long-term rest and properly managed grazing produced few significant differences, and in some situations, negative ecological effects result from long-term rest. Additionally, Randall et al. (2022)[2] found that appropriate livestock grazing practices can increase cover and biomass of high-value forbs used by GrSG. Greater insect diversity and activity-density of arthropods eaten by GrSG was found on lands that have been grazed by

[1] Davies, K.W., M. Vavra, B. Schultz, and N. Rimbey. 2014. Implications of longer term rest from grazing in the sagebrush steppe. Journal of Rangeland Applications 1:14-34.

[2] Randall, K. J., Ellison, M. J., Yelich, J. V., Price, W. J., & Johnson, T. N. (2022). Managing Forbs preferred by greater sage-grouse and soil moisture in mesic meadows with short-duration grazing. Rangeland Ecology & Management, 82, 66–75. https://doi.org/10.1016/j.rama.2022.02.008

livestock under rest-rotation compared to lands ungrazed for over a decade.[3] In addition to these potentially positive ecological effects of properly managed livestock grazing, maintaining viable ranching operations that include both BLM and private land helps to preserve more expansive and unfragmented landscapes that benefit GrSG.[4] Loss of access to forage on BLM land negatively impacts the economic viability of a ranching operation and could lead to conversion or development of private rangelands that would fragment GrSG habitat.

Table 2-12 Livestock Grazing

Objective RM-1 Alt. 4 states, *"avoid direct adverse impacts to limiting GrSG habitats from livestock management and range improvements…"* We recommend some measure of significance of impacts needs to be included; otherwise, all grazing and range improvements could be restricted. The impact of grazing and range improvements to habitat can be positive or negative. There should be a threshold of significance in order for this to be consistently applied.

Management Action RM-4 for Alts. 4,5 includes, *"Consider removal or modification of projects that negatively affect GrSG or GrSG habitat."* We recommend some measure of significance of impacts needs to be included in order for this to be applied in a way that advances GrSG conservation and is feasible to implement.

Management Action RM-6 includes identification of high-risk fences and evaluation as to whether or not the fence is needed in coordination with the state wildlife agency. Any evaluation of whether or not range infrastructure, such as fences, is needed must include permittees. CDA requests that language be incorporated to include coordination with permittees, as fences are key to livestock distribution, which affects land health and GrSG conservation.

Management Action RM-7 includes consideration of whether to offer voluntarily relinquished permits for re-authorization. Federal grazing permits are important to the agriculture industry in Colorado; thus, CDA requests to be consulted on any decisions related to not reauthorizing livestock grazing.

Management Action RM-7 includes that use of reserve common allotments would not be allowed due to drought. The purpose of a forage reserve is to provide an alternate source of forage when natural factors, such as fire or drought, create such a need. Managed grazing is a valuable vegetation management tool, and this provision could restrict the use of livestock grazing for fuels reduction to mitigate wildfire danger during drought. CDA requests that use during drought be allowed under certain circumstances as long as it can be demonstrated that there will be no significant adverse impacts on GrSG conservation.

[3] Goosey, H. B., Smith, J. T., O'Neill, K. M., & Naugle, D. E. (2019). Ground-dwelling arthropod community response to livestock grazing: Implications for avian conservation. Environmental Entomology, 48(4), 856–866. https://doi.org/10.1093/ee/nvz074

[4] Maestas, J. D., R.L. Knight, & W.C. Gilgert. 2003. Biodiversity across a rural land-use gradient. Conservation Biology 17(5):1425-1434. doi:10.1046/j.1523-1739.2003.02371.x

Table 2-15 Adaptive Management

On pages 2-124 the document states, *"Causal Factor Analysis (CFA) teams will include at a minimum the local BLM biologist, BLM state sage-grouse lead, and a representative from the state wildlife agency."* Regarding CFAs involving livestock grazing as a potential factor, range staff and permittees should be notified and provided an opportunity to provide pertinent information in all causal factor analyses involving livestock grazing as a potential factor.

Chapter 4 Environmental Consequences

As documented above in these comments, properly managed livestock grazing is not only compatible with GrSG habitat but can also be beneficial. This fact is further supported in the EIS on page 4-8, *"Well managed livestock grazing may change plant community composition, increase productivity of selected species, increase forage quality, and alter structure to increase habitat diversity (Vavra 2005), and can positively effect GrSG habitat suitability (Manier et al. 2013)."*

Standard 4 of the Colorado Standards for Public Land Health requires that all uses are managed so that species and their habitats are maintained or enhanced by sustaining healthy, native plant and animal communities. This is confirmed in the EIS on page 4-9, *"Under all alternatives, described in Section 2.9.7, livestock grazing would be managed to meet or make progress towards land health standards and improper grazing would be limited and addressed through implementation-level corrective actions."*

Regarding Alt. 3 on page 4-24 the EIS states, *"All PHMA would be unavailable for domestic livestock grazing. As a result, livestock would be removed from PHMA and impacts to GrSG and habitat associated with grazing, such as habitat alterations (Nature and Types of Effects) would be reduced. Removing livestock could lead to increases in herbaceous understories, which would increase forage availability and nesting habitat suitability for GRSG."* It is crucial for the RMPA to distinguish between proper and improper livestock grazing.

As stated above, properly managed grazing is a requirement on BLM lands. Any circumstances where improper grazing might occur must be identified and corrected according to multiple directives. All instances in the analysis where the difference between proper and improper grazing is not clearly explained must be corrected in the RMPA. Any negative impacts attributed to improperly managed livestock grazing must be described as contrary to the multiple levels of BLM laws, regulations, plans, and implementation guidance that require proper grazing.

It is imperative that the Final RMPA and EIS recognize and incorporate the benefits of properly managed livestock grazing. Changes to livestock grazing management should generally only be made at the allotment level based on site-specific, quantitative resource data.

In summary, the importance of livestock grazing permittees as partners in GrSG conservation on BLM land is a key component for this RMPA to succeed. Many ranchers have invested significant resources into range improvements on federal lands that benefit multiple species of wildlife and livestock. These operations rely on consistent access to forage on federal lands in order to maintain economic viability. Properly managed livestock grazing is a

valuable resource management tool that can improve wildlife habitat, biodiversity, and overall ecological conditions while providing cultural and economic benefits to communities.

Thank you for the opportunity to comment on the draft Resource Management Plan Amendment and Environmental Impact Statement for the Greater Sage-Grouse. Please contact Harrison Hallmark (harrison.hallmark@state.co.us or 720-610-2537) or myself (les.owen@state.co.us or 303-869-9032) with any questions or concerns.

Sincerely,

Les Owen
Conservation Services Division Director

June 13, 2024

c/o Patricia Deibert, National Sage-Grouse Conservation Coordinator
Bureau of Land Management
BLM Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, Utah 84101

Submitted Electronically to: BLM ePlanning, https://eplanning.blm.gov/

RE: Bureau of Land Management Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning

Dear Sage Grouse Plan Revision Team:

The undersigned organizations appreciate the opportunity to provide comments on the March 15, 2024 notice of availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning (herein referenced as "the plan"). The plan would amend 77 Bureau of Land Management (BLM) resource management plans (RMPs) in the 10-state Western region where public lands ranchers have conserved and managed sage grouse species for decades. These plans span 121 million acres of Greater Sage-Grouse (GRSG) habitat in California, Colorado, Idaho, Montana, North and South Dakota, Nevada, Oregon, Utah, and Wyoming and affect the each of the permittees who hold the more than 18,000 grazing permits on BLM land.

The Public Lands Council[1] (PLC) is the national organization dedicated to advocating for the approximately 22,000 federal grazing permittees who run cattle and sheep on nearly 250 million acres of BLM and U.S. Forest Service (USFS) lands across 14 Western states. The National Cattlemen's Beef Association (NCBA) is the nation's oldest and largest trade association representing American cattle producers, representing nearly 150,000 cattle producer-members through both direct membership and 44 state affiliate associations. The American Sheep Industry Association (ASI) represents the interests of more than 88,000 sheep producers located across the country. The Association of National Grasslands represents producers whose members graze on any

[1] PLC has state affiliates in California (California Cattlemen's Association, California Wool Growers Association, California Public Lands Council), Colorado (Colorado Cattlemen's Association, Colorado Livestock Association, Colorado Wool Growers Association, Colorado Public Lands Council), Idaho (Idaho Cattle Association, Idaho Wool Growers Association, Idaho Public Lands Council), Montana (Montana Stockgrowers Association, Montana Wool Growers Association, Montana Public Lands Council), Nevada (Nevada Cattlemen's Association, Nevada Wool Growers Association, Nevada State Grazing Board Central Committee), New Mexico (New Mexico Cattle Growers Association), Oregon (Oregon Cattlemen's Association, Oregon Sheep Growers Association, Oregon Public Lands Council), North Dakota (North Dakota Stockmen's Association, North Dakota Lamb & Wool Producers Association), South Dakota (South Dakota Cattlemen's Association, South Dakota Sheep Growers Association, South Dakota Public Lands Council), Utah (Utah Cattlemen's Association, Utah Wool Growers Association, Utah Public Lands Council) and Wyoming (Wyoming Stock Growers Association, Wyoming Wool Growers Association, and Wyoming State Grazing Board as part of the Wyoming Public Lands Coalition), as well as three national affiliates: the National Cattlemen's Beef Association, the American Sheep Industry Association, and the Association of National Grasslands.

number of national grasslands in the West, many of whom also hold BLM permits. Federal lands grazing permittees own and manage some of the most productive private lands and public lands that are both key in providing continuous wildlife habitat and other ecosystem services. These permittees are well-versed in the Federal Lands Policy and Management Act (FLPMA) and other federal laws as part of their long history of acting as crucial partners for their agency counterparts in the pursuit of resilient public lands.

Together with our affiliates, we have been actively engaged in policy discussions around voluntary conservation for sagebrush habitat and GRSG management for several decades. This latest RMP amendment and corresponding draft Environmental Impact Statement (DEIS) incorporate some of the most significant challenges land managers have navigated since the first iteration of land use planning in 2015. While the 2015 plans, and the 2019 amendments, have been long litigated and applied to varying degrees across the Western states, states themselves have continued to lead conservation and management efforts, often in spite of federal planning. As we shared in our 2018comments, "Western States' sage grouse management plans have been the primary driver of improvements to the species range-wide." Today, that continues to be true and is amplified across a number of the most pressing portions of plan revision. PLC appreciates the opportunity to once again provide feedback on the plan and incorporate our comments both on the DEIS and on the RMP here.

Public Comment Period

Following publication of the plan in March 2024, PLC and our partners requested an extension to the comment period to allow for substantive review of the more than 4,800 pages of text contained in the three volumes of the DEIS and RMP amendment. Publication of the plan in spring, when livestock producers are at their busiest during calving and lambing season, often dealing with weather challenges and administrative meetings with agencies like the BLM in preparation for summer grazing, disadvantages permittees who should have ample opportunity to review materials that will have a substantive effect on their operations.

Further, the DEIS was not written in plain language or clear organizational pattern. This complicated permittees' ability to review in a meaningful way and compromised their ability to make fully informed contributions on how the DEIS and plan would impact them. The organization of Chapter 2, Chapter 4, and Appendix 15 contained so many cross references that comparing language and potential consequences on a rangewide level was unduly cumbersome. PLC has heard similar concerns from all states where comparisons of the 2019 plans and updated alternatives was unclear.

Finally, this comment period runs concurrently or consecutively with comment periods on BLM's Western Solar Plan expansion process as well as ongoing discussions around BLM's grazing regulations, adding significant levels of uncertainty for the regulated communities. Despite extension requests coming from nearly every corner of the multiple use community, BLM declined to provide an extension. We are concerned about BLM's lack of willingness to extend in light of these conditions and view this decision as adversarial to productive engagement on implementation.

Alternative-Specific Feedback

The undersigned generally prefer Alternative 2, which most closely resembles the 2019 GRSG plan amendments. As we outlined in our comments at that time, incorporated as Appendix A, successful work between Western States and BLM (and USFS, where applicable) is key to the success of GRSG habitat management across the board. Alternative 2 provides a planning framework that enables site-specific approaches to ensure practices match on-the-ground needs. To that end, we offer the following feedback on the alternatives, and additional considerations below.

Alternative 1

During the planning process around the 2015 RMPs, the undersigned stridently objected to components of the plans that targeted grazing activities, utilized decision criteria not based in science, and created wide areas of conflict with state engagement efforts. Alternative 1 has been heavily litigated, and the undersigned recommend future implementation of updated plans, science, and activity, with retention of the concepts that comported with state plans.

Alternative 2

Alternative 2 most closely resembles the plan amendments in 2019, which were widely hailed as significant improvements on the ill-fated 2015 amendments. As noted in Chapter 2 of the plan, the U.S. District Court of Idaho's injunction has blocked full implementation of the 2019 amendments. The 2019 amendments addressed some of the key failures of the 2015 plans, including coordination with states, consolidation of habitat designations to reduce management restrictions, and utility of updated science. While consistency with state plans varied in both the 2015 and 2019 plan amendments, the 2019 amendments more broadly recognized the need to be consistent with state plans in areas where 2015 plans caused conflict, while also allowing successful implementation to persist. Any future implementation should take a similar approach: build on successes where they exist, and allow for greater flexibility to reduce jurisdictional conflicts. This is the most favorable Alternative for livestock grazing and comprehensive management of resources for GRSG.

Alternative 3

BLM categorizes Alternative 3 as the alternative with the "greatest measures to protect and preserve GRSG and its habitat." This alternative is neither based in science nor supported by the agency's responsibilities under FLPMA. The identification and intention to designate more than 11 million acres of Areas of Critical Environmental Concern (ACECs) coupled with the restriction of the vast majority of multiple uses immediately makes it impossible for BLM to adhere to FLPMA's requirements to manage landscapes for multiple use, and will result in undue degradation of those 11 million acres – and more. The undersigned object to this alternative. Implementation would require increased fencing to separate federal and nonfederal lands resulting in possible habitat fragmentation, increased collision risks, increased opportunities for GRSG predators. Further, removal of grazing could allow for the buildup of fine fuels, which may increase the risk of a large-scale wildfire that would damage or destroy large areas of GRSG habitat.[2] For all these reasons, and others that continue throughout the comments, Alternative 3 is therefore is not a viable alternative and should not be considered moving forward.

[2] 2-24

Alternative 4

While this alternative does not automatically reconsider whether an area would be made available for grazing simply due to the presence of GRSG habitat designation of some kind, this alternative does consider (as does Alternative 5) additional planning instruction to consider thresholds and responses during the grazing permit renewal process. The undersigned herein raise concerns about the thresholds and responses that BLM suggests, particularly in light of other ongoing planning efforts that affect permittees' ability to engage with the agency and their permit with any degree of predictability. Alternative 4 would require significant revision in order to be consistent with FLPMA, and we include robust comment below.

Alternative 5

Like Alternative 4, the undersigned raise concerns with consideration of threshold and response in this alternative. As the agency's preferred alternative, the undersigned offer the following comments with respect to components that impact federal lands grazing and permittees' role in habitat management. In addition to comments raised below, we'd like to emphasize that in this alternative especially, BLM must increase management of horses and burros under the Wild Free-Roaming Horses and Burros Act (WFRHBA) in order to mitigate habitat loss. Components of more restrictive alternatives call for removal of horses entirely for priority habitat areas; the undersigned support removal of significant numbers of horses to return Herd Management Areas to low Appropriate Management Levels (low AML) to mitigate catastrophic range impacts both for GRSG and for all other species. If Alternative 5 is to proceed, BLM must make significant revisions to the underlying view of the role grazing plays in ecosystem management and ensure any plan and environmental documents comport as closely as possible with state plans and conservation measures.

Alternative 6

Similar to Alternative 3, the undersigned object to the utilization of ACECs as a proxy for removal of multiple use in the name of "conservation". Layering in limited management in the restrictive ACEC designations with continued utility of PHMAs – which also restrict management – would similarly limit BLM's ability to engage in any meaningful continuation of multiple use management. The undersigned object to the selection of this Alternative as it requires significant revision to even begin to be compliant with FLPMA.

General Comments

Role of Grazing

In the ten years since the first planning effort, a significant body of work has been developed to analyze the relationship between GRSG habitat and grazing activity. The definitive conclusion is that managed grazing is not only compatible with GRSG populations and habitat requirements, but crucial to the survival of GRSG chicks, particularly in times of drought where early food sources may be scarce. While the plan references limited literature related to this interaction, the undersigned recommend more robust evaluation of longitudinal studies, like Conway et al. 2014-2024 (reports contained in Appendix B).

We remain concerned about the focus in Chapter 4 related to the consequences of livestock grazing, including assertions that water features and appropriate fencing have a disproportionate impact on predation by providing predators with resources, without recognition of the inherent deterrent grazing management[3] provides for predators like ravens and coyotes. Further, there are robust mechanisms in place to address improper livestock grazing or adverse outcomes from grazing activities, so we are concerned about the agency's use of "livestock grazing" and "improper livestock grazing" that appears to present these terms as interchangeable in Appendix 15.

Generally, the undersigned continue to oppose significant modification of grazing activities as a singular means to undertake GRSG conservation without appropriate evaluation under the National Environmental Policy Act (NEPA). At the time of submission of these comments, BLM is undertaking revision and issuance of Instructional Memoranda in preparation to reform the agency's grazing regulations; direction to amend grazing permits without first providing clear direction on the implementation of the grazing program, and settling the matter of grazing permit administration for existing permittees in this plan would be predecisional and inappropriate for both sets of regulations.

Permit Modification, Retirement

As in 2015 and 2019, the undersigned oppose retiring permits and converting permits into forage reserves or grass banks as a proxy for GRSG conservation. Equally, we oppose the same actions as a proxy for mitigation of other activities related to GRSG management. As noted repeatedly in Chapters 2 and 4, removal of grazing from the landscape increases the risk of fine fuels buildup on the landscape which increases the risk of catastrophic wildfire, which has knock-on effects for plant biodiversity, predation, encroachment of invasives, and long-term lek selection. Any permits relinquished as a matter of business administration should undergo immediate evaluation for reissuance, as a single permittee's decision should not remove the allotment(s) from productive use.

We appreciate the clarification that using a single indicator of the Habitat Indicators Table as a criterion to modify grazing management or any other use[4] is not permissible. In a final plan, further clarity is needed as there are fairly significant conflicts between the directions to utilize the Habitat Assessment Framework and other monitoring protocols to inform decision making.

Preference Modification, Relinquishment

We oppose the default position that any relinquished preference should be considered as a reserve common allotment for use on a temporary basis[5]. Permittees have repeatedly confirmed that BLM staff are largely unwilling to utilize temporary, non-renewable (TNR) permits because the process is so inefficient; TNRs must be requested in the year they are intended to be used. Average processing times appear to be in excess of 90 days, at which time the utility of the allotment has already been expended or the fire risk is exceedingly high (or a fire has burned through), and the opportunity to graze for fuels reduction is eliminated. Layering of requirements

[3] Green et. al 1984
[4] 8-22
[5] 2-112

that relinquished permits or preference will not immediately be analyzed for reissuance, coupled with the agency's unwillingness to utilize tools like TNR, will result in fewer active allotments and increased persistence of hazardous fuel loading.

Residual Forage

As a matter of practice, BLM's widely panned requirement for ≥7" stubble height should be abandoned in all states, yet there are several cases where BLM has retained residual forage standards that are not meaningful indicators of rangeland health or of habitat suitability for GRSG. Habitat Indicators[6] continue to set largely arbitrary requirements for residual forage without guidance about when and how to make measurements, since the values vary throughout the season. Repeatedly over the last decade, states and local BLM offices have demonstrated that not only is this metric unachievable for certain ecologies where forage cover is a better indicator of nest success, the arbitrary metric places undue focus on a trigger that if tripped, has significant consequences for all land users – and productive habitat management. BLM should provide greater clarity on measurements and focus on site-specific evaluations that are representative of habitat suitability, not figures on a chart.

Thresholds and Responses

With consideration to thresholds and responses into grazing permits, the undersigned request robust engagement with livestock grazing permittees and an outright revision of the agency's position that grazing is a primary threat and subject to Table 8-1, rather than robust requirements in the grazing regulations[7]. As part of the recently-finalized BLM Public Lands Rule[8], permittees will now have the benefit of seeing land health standards consider other multiple uses in landscape health assessments without being inappropriately held accountable for outcomes not caused by grazing.

In application of both the Public Lands Rule and this plan, BLM must not adopt additional requirements for grazing permits to be modified, or incorporate additional thresholds and responses, without first determining whether inclusion is warranted due to the grazing management – not external factors. Application of land health standards must apply to uses across the board. Grazing must no longer be held responsible for surface disturbance of other uses due to vague or poorly drafted regulatory parameters.

Range Improvements

BLM appears to take the position that range improvements, generally, pose an outsized risk to GRSG persistence. Detailed in sections below, productive grazing management depends on BLM compliance with the grazing regulations and the ability to develop range improvements that support reasonable and responsible land use management. Prohibition of new range improvements, recommendations to remove range improvements, or consideration of range improvements as primary threats are not supported by science and the undersigned oppose entirely.

[6] 8-1 through 8-20
[7] 43 CFR 4100, subpart 4180.
[8] 89 CFR 40308

Modeling

While rangeland data and monitoring information is often useful for modeling exercises, no decision should be based on modeling data alone without on-the-ground verification of ecological conditions.

Adaptive Management and Causal Factor Analysis

Generally, livestock producers support management approaches that incorporate adaptive management principles, but the plan creates significant confusion and conflict when directing the use of adaptive management for GRSG habitat. In addition to conflicts with the BLM Public Lands Rule and the amended implementation of land health standards identified below, the plan is inconsistent in its direction of when, how, and why grazing management should be changed in the event of a "hard or soft" trigger being tripped on the landscape. PLC continues to emphasize that if there are issues on grazing allotments that require a change in grazing utilization or management, mechanisms already exist to modify that grazing; layered instruction in a GRSG plan or other guidance document will result in unnecessary delays, duplicative activities, and could threaten permit administration. This is particularly evident in the discussion of Causal Factor Analyses (CFAs) that are applied across Alternatives 3, 4, 5 and 6:

> *If no cause for a habitat or population decline can be determined the BLM may consider implementing additional restrictions on existing or new authorizations in the area, consistent with permits/surface use rights in coordination with the permit holder and the state wildlife management agency.* ***This is to reduce disturbance until either a causal factor can be determined through additional monitoring and analyses, or the population declines cease.***[9] [emphasis added]

There is no apparent timeframe for the determination of a causal factor, and removal of a use without a clear causal relationship runs counter to both FLPMA and best management practices that direct implementation of proper management actions.

Lek Buffers

The undersigned have consistently raised concerns about BLM's application of lek buffers as part of GRSG plan administration. In all states, the undersigned oppose the application of lek buffers for grazing management, as grazing has proven both an effective tool in supporting nest success and mitigating wildfire risk.

Historic applications have increased discrepancies among states and conflicted with state management plans. Regulatory approaches to disturbance near leks have trended toward avoiding all disturbance, even temporary disturbance that would benefit the larger ecology or suitability of habitat both for birds and other species. We warn against that approach, urging BLM to take a wider view of landscape scale management and provide wide latitude for local land managers to take necessary actions to manage habitats with the necessary tools.

[9] 2-128

Generally, implementation of future management should adhere to state plans, with additional considerations for state-specific issues. Federal restrictions on the application of pesticides or herbicides to control or mitigate invasive species or critical pests (cheatgrass and grasshoppers, for example) should be included in buffer exception criteria to proceed, in support of contiguous management of landscape-scale health.

Conflict with other regulatory actions

BLM should make significant revisions or directly address areas where the GRSG plan creates conflict with other ongoing regulatory actions. Federal lands grazing permittees are already subject to considerations of NEPA, the Endangered Species Act (ESA), Wild Free-Roaming Horses and Burros Act (WFRHBA), the Migratory Bird Treaty Act (MBTA), FLPMA, the Taylor Grazing Act (TGA), and manage interactions with other multiple uses like mining, recreation, timber production, energy production, wildlife habitat consideration, and more. Additional regulatory complications not only cause uncertainty for the regulated community, but also for BLM employees and partners who are more prone to inaction rather than violating the law. That inaction has resulted in conditions that exacerbate catastrophic wildfire, delayed remediation of disturbed areas, and poor relationships with permittees. Specific examples of conflicts are below:

Conflicts with Western Solar Plan

The BLM's draft programmatic EIS for Utility-Scale Solar Energy Development and the analysis surrounding expansion of the 2012 Western Solar Plan seeks to expand utility-scale solar across 6 additional states. BLM has clearly addressed their goal to radically expand solar and other renewable development on federal land, and have already exceeded the administration's goal to site 25 gigawatts of solar on federal land by 2025. Installation of these solar fields will result in multiple-use landscapes to single-use parcels, contrary to the direction given to the agency in FLPMA. By the BLM's own admission, some of these converted landscapes will have been grazing lands; the undersigned oppose conversion of grazing lands not only for the loss of agricultural productivity, but also for the loss of habitat and ecosystem services. Given the clear loss of habitat when lands are converted to solar farms[10], and with the additional perch provided to predators like ravens, solar installations pose an outsized risk to GRSG. These risks are undercounted in the plan and the EIS; the undersigned request BLM avoid siting of any solar facilities on grazing lands and on lands that have utility for GRSG habitat.

While we appreciate that the updated solar planning "defers to this GRSG planning effort to decide how solar energy development is conducted in GRSG habitat management areas"[11], BLM will be unable to demonstrate success in their solar plan if also achieving success in GRSG habitat management. The ability to implement both measures are fatally conflicted, particularly if the agency intends to continue management of other multiple uses on the landscape. We oppose any outcome that would result in grazing bearing the cost, financial or otherwise, of BLM's attempt to do both simultaneously.

[10] Western Solar Plan at B-67.
[11] 2-92

Conflicts with Public Lands Rule

The recently-finalized Public Lands Rule has upended the BLM's multiple use mandate with respect to prioritization of use and how the agency considers mitigation as part of the landscape of permitted actions. The undersigned appreciate the application of land health standards across the landscape so grazing no longer bears the burden of degradation from other uses, but the GRSG plan here largely fails to recognize that these standards will be applied to uses other than grazing, resulting in much of the GRSG plan utilizing grazing as the single use to adjust in the face of degradation.

While BLM outlines their intent to adhere to the mitigation hierarchy when addressing disturbance for Alternatives 3, 4, 5 and 6, the agency exceeds their authority when outlining that compensation will be required if impacts can't be avoided or minimized – and that acquisition of private lands and interests is an appropriate offset:

> *Where restoration is not possible, preservation (e.g., conservation easements, acquisition of inholdings) can be used to offset impacts and should be designed to protect uniquely important habitats (e.g., limiting winter habitats, connectivity corridors) or areas of GRSG habitats that are at a high risk of conversion.*[12]

PLC opposes the acquisition of private interests and urges a more thoughtful mitigation strategy that does not force additional restrictions on private lands, rendering both the disturbed public and acquired private lands unusable.

Conflicts with Executive Order 14072

BLM must make clear that the restrictions placed on old-growth pinyon juniper stands related to Executive Order (EO) 14072 create risk for GRSG management. After decades of removal and containment strategies, BLM has pivoted to a posture that would undertake reduced work to address pinyon juniper encroachment. The undersigned support state assertions that the agency's understanding of current pinyon juniper coverage is based on faulty data, which has resulted in an extreme posture that pinyon juniper work should be drastically reduced.

Successfully addressing conifer encroachment has a compounding positive effect on GRSG habitat and populations. Recent work concluded that there are "myriad benefits of conifer removal for wildlife and grazing lands"[13], with a 5-year lek return rate approximately 12 percent higher than at a control site[14]. Additionally, longitudinal study found a nearly 30 percent increase in nest return in restored habitat 3 years post-treatment, while nearly 90 percent of hens avoided nests where habitat faced significant encroachment[15]. Any posture BLM may take in pursuit of EO 14072 is diametrically opposed to success in GRSG work. BLM must make clear EO 14072 should not apply to conifers like pinyon juniper; to continue to restrict conifer reduction based on age of the trees, not the value, would be a pyrrhic victory that will have a devastating effect across Western rangelands. Value of old growth must be a multifaceted analysis; just because something may qualify as old growth does not inherently create value. "Conifers like Western

[12] 2-23
[13] NCRS - Warners
[14] Olson et al. 2021
[15] Sage Grouse Initiative 2017

Juniper have expanded by as much as 600% over the last 150 years — and 90 percent of that expansion has occurred in sagebrush country," according to the Natural Resources Conservation Service's (NRCS) Working

Further, BLM plans for GRSG have been consistent since 2015; agency-desired conditions for lek security make clear that habitat is generally unsuitable when trees are adjacent to leks.

> *Habitat Condition: No conifers or tall structures within 1.0 mil of lek center, and conifer cover less than 5% within 4.0 miles of lek.*[16]

BLM must not enact policy that results in degraded landscape or unfavorable conditions for GRSG and export the burden of GRSG habitat improvement on all other multiple uses. If restrictions are to be applied to a landscape, BLM should also follow the same rules.

Conflicts with wild horse and burro management

BLM has long faced drastically overstocked Herd Management Areas as a result of rampant mismanagement. Degradation to GRSG habitat from horses and burros is well documented[17]; BLM must devote additional resources to these areas to achieve low AML and conduct appropriate remediation. Alternately, BLM should consider total removal of animals from lekking areas as part of priority gathers. The undersigned have submitted robust comment through the BLM Wild Horse and Burro Advisory Board and incorporate relevant feedback here by reference.

The plan generally equates wild horse and burro presence with other kinds of multiple use, which is an inaccurate comparison. Livestock grazing is carefully managed, with clear and immediate direction to address unfavorable conditions if adverse impacts are observed. No such mechanism exists, or is usable, for wild horse and burro herds. BLM must enact a more aggressive gather and removal approach for these herds and abide by the WFRHBA in order to avoid habitat degradation for GRSG and other species.

Mitigation

See concerns above in "Conflicts with Public Lands Rule" for more detail. PLC remains concerned about BLM's interchangeable use of "no net loss" and "net conservation gain"[18] from prior plans, particularly related to Utah-specific circumstances. These should not cross-cut across state plans.

[16] 2-OR-47: While this language relates specifically to Oregon planning conditions during Breeding (including lekking, pre-nesting, nesting, and early brood rearing times – March 1 – June 30), the language is common across all state-specific plan activity.
[17] Coates et al. 2021
[18] 2-183

Land Designations and Use Conversion

The undersigned unequivocally oppose the designation of ACECs as a proxy for GRSG conservation. ACECs have become the BLM's default mechanism for unilateral designation of areas with minimal public process and little-to-no accompanying management strategy. In many cases, as self-identified in the plan, the habitat BLM has identified that would be designated as ACECs in Alternatives 3 and 6 would not be eligible under current ACEC parameters.

In the recently finalized Public Lands Rule, BLM further expedited the ACEC designation process, making the process less accessible to the public and less transparent to stakeholders. Monitoring of ACECs over time shows an increased likelihood of elimination of grazing and a corresponding increase in wildfire occurrence (followed by invasive species conversion). BLM's historic reliance on designation of habitat areas gave rise to most of the state challenges in 2015; BLM must not reintroduce additional controversy, uncertainty, and layered management directives that will make BLM lands less accessible and less successful for multiple use management. To be clear, PLC opposes the use of ACECs across any of the alternatives.

Further, in consideration of habitat stability over time, the undersigned oppose policies that would result in the conversion of landscapes away from agricultural and grazing uses to others. Conversion would result in habitat loss and disenfranchisement of private lands too, which would compound losses for GRSG as private lands provide valuable habitat.

Threats to Habitat

BLM must take a more targeted view of the best way to address threats to GRSG habitat. While livestock grazing does not present a substantive threat to GRSG or GRSG habitat, BLM's failure to address other threats in a meaningful way in this plan again place the burden on agency staff to adjust uses that can be easily addressed or altered, like grazing. This continues to be unacceptable and runs counter to science and management authorities.

Drought

Best predictors of nest success and chick retention include precipitation and cover; precipitation across Western states is often unpredictable, with a good portion of the affected states experiencing drought conditions in any given year. Failure to allow flexibility in grazing activities across the landscape in drought conditions will affect the viability of the grazing industry. To this end, Management Action RM-7[19] should include drought as a condition where TNR permits may be issued. BLM should also consider adding other adverse resource conditions, including other disruptions to existing permits (like other BLM initiatives that may force permittees off an allotment), as authorized conditions under which a TNR could be issued.

Predation

We appreciate BLM's recognition that predation is a significant concern for nest success, but remain concerned about recent agency posturing that demonstrates a predecisional bias against predator control and predator management plans. On June 12, 2024, BLM shared social

[19] 2-112

media[20] making it clear that despite robust evidence to suggest predator control is not only important but necessary, the agency's belief is that it is altogether avoidable.

Wildfire

Repeatedly throughout the plan and sections related to adaptive management, BLM outlines process for closure of burned allotments, adjacent allotments[21] (including unburned areas), and reduction in grazing for burned areas without consideration of forage availability or site-specific ecological needs. We oppose this broad management directive and urge clear direction in management actions and objectives that require on-the-ground verification of conditions prior to reduction or elimination of grazing activities in the event of fire.

As addressed throughout (and referenced in supplemental literature), the value of grazing as a fuels management tool is well known. Across vast swaths of the West suffering from dangerous levels of fuel loading, we recommend the agency utilize grazing as a prescriptive management tool to reduce fuels and be creative about how to reduce fuels to protect both grouse and larger ecosystem health.

Coordination with States

Fatal flaws of prior plans could have been avoided if BLM had coordinated more closely with states. As outlined in response to Alternative 2, the undersigned believe BLM must fully embrace state knowledge, expertise, data, mapping, and management approaches. For example, proposed management actions, including RM-6[22] (fencing requirements), generally omit recognition of needing to work with states' authorities. Management actions, like fencing, must be coordinated with local and state officials who have primary responsibility to management wildlife on public lands and in cooperation with private landowners. At no time should BLM undertake these kinds of assessments alone, and in all possible scenarios, livestock grazing permittees should be included in discussions that impact their allotments and adjacent parcels.

Additionally, there are several instances where individual states are singled out for specific provisions, like in Appendix 15.1.6 related to Nevada Specific BMPs, without BLM speaking to the reason other states may be omitted or treated differently through the process. Clarity in the applicability of provisions as part of the rangewide approach is imperative.

Durability

The history of BLM's efforts to undertake sage grouse management plans is rife with challenge. In this effort, BLM must make this plan consistent with existing authorities, rectify serious issues states have identified in habitat designation boundaries, coordinate more closely

[20] https://twitter.com/BLMNational/status/1801011710939038082

[21] 2-112: "*If the neighborhood cluster cannot be restored to original sagebrush conditions and/or habitat function due to ecological or disturbance limitations (e.g., intense fire killed soil microfauna, dense anthropogenic activities) restoration and/or habitat enhancement in adjacent neighborhood clusters can be considered to increase the number of GRSG supported in those areas."*

[22] 2-112

with states and stakeholders, and abandon prescriptive language that boxes out successful local management.

We are concerned that BLM will continue to make substantive amendments to procedures and processes after finalization of this plan, and encourage BLM and the larger DOI to engage in good faith coordination and consultation with affected stakeholders like grazing permittees.

Additional Chapter 2 Concerns

Table 2-12. Comparison of Alternatives, Livestock Grazing

This table suffers from a general lack of specificity and scale of impacts. The undersigned identify the following challenges and offer suggestions for improved clarity:

Objective RM-1[23]: Alternative 4 directs management to "avoid direct adverse impacts to limiting GRSG habitats from livestock management range improvements". This language lacks the specificity needed to be usable by land managers. Calling for avoidance of *any* adverse impact will require managers to eliminate activity, when short term disturbance or impact may create more favorable conditions in the future. This language fails to anticipate these benefits, and needs to be clarified that range improvements can provide value even if there are temporary or minimal impacts.

Management Action RM-1[24]: Any adjustments, as suggested in the item, should be based on robust coordination with the livestock grazing permittee, and trend monitoring as part of the grazing permit. Grazing should not be held accountable for issues arising from mismanagement of other uses.

Management Action RM-3[25]: Incorporation of thresholds and responses in the terms and conditions of the grazing permits (as suggested in Alternative 4) is an inappropriate duplication and would cause confusion and delays. Further identification in RM-3 for Alternatives 5 and 6 appear to place an overreliance on the idea that grazing is a causal factor for any habitat condition, which is counter to the rest of the plan and DEIS. Consistent application of terms and conditions of a grazing permit should be sufficient in this case.

Management Action RM-4[26] and RM-5[27]: Modification of range improvements should be done only after extensive consultation with the permittee and agreement upon remedy, as range improvements are governed by the terms of a grazing permit and are a permittees' vested interest in the allotment.

[23] 2-104
[24] 2-105
[25] 2-108
[26] 2-109
[27] 2-110

Management Action RM-6[28]: Addressed above, any action taken related to fencing must be done in coordination with the permittee and with the agreement and concurrence of the appropriate state authority.

Management Action RM-7[29]: Addressed above, PLC and our affiliates oppose the retirement of relinquished permits, opposed forced retirement of permits to pursue allotment closures, and conversion of vacant allotments to a closed posture. Each of these reduces on-the-ground management, resulting in increased wildfire risk, increased risk of invasive spread, higher risk of predation, and other direct primary risks to GRSG.

Appendix 15 Concerns

15.1.2[30]: We urge BLM to avoid creating duplicative requirements to address grazing management in the event that grazing is identified as a causal factor for adverse conditions. As part of each grazing permit, there is the facility to address grazing management in the event of adverse outcomes; inclusion of additional, layered requirements in Best Management Practices (BMPs) creates functional confusion and the appearance that agency staff should be looking for reasons to trigger grazing reductions, rather than respond to local conditions. Coupled with confusing language in Chapters 2 and 4, we are concerned the requirements would be unclear and cause undue burdens and delays.

15.1.4[31]: As the agency conducts pre-season assessments, these should be done in coordination with the permittee and as part of routine grazing monitoring protocols.

15.1.5[32]: We appreciate and support the direction to use prescriptive grazing to reduce hazardous fuels.

Generally, Appendix 15 pursues multiple scenarios where grazing would be reduced, temporarily halted, or eliminated based on arbitrary dates, preemptive consideration of anticipated conditions, and other factors outside actually observed and documented use. We remain concerned that removal of grazing from these areas would have increasingly negative impacts on these allotments, GRSG habitat, and surrounding landscapes if not based on existing conditions and trend monitoring.

Conclusion

In summary, PLC and our affiliates primarily support Alternative 2 as drafted, but have also offered feedback to make the preferred Alternative compliant with FLPMA and prevent undue burdens for livestock producers. We appreciate the opportunity to lend permittees' expertise and hope you will incorporate these concepts in any final draft.

[28] 2-111
[29] 2-112
[30] 15-1 through 15-2
[31] 15-3
[32] 15-4

Many of our state affiliates and partners have also submitted comments; on state specific issues, we encourage you adopt their feedback in final plans. These comments are not intended to supersede or supplant any contribution a state affiliate may submit. Please do not hesitate to contact us, as we continue to prioritize productive partnerships with federal agencies in land management.

Sincerely,

Public Lands Council
American Sheep Industry Association
Association of National Grasslands
National Cattlemen's Beef Association

Appendix A: 2018 GRSG Plan Comments

November 27, 2017

Public Lands Council
Ethan Lane
1275 Pennsylvania Avenue NW
Suite 801
Washington DC 20004

VIA EMAIL AND ONLINE SUBMISSION ONLY

Bureau of Land Management
Attn: Johanna Munson
1387 South Vinnell Way
Boise, Idaho 83709

BLM_sagegrouseplanning@blm.gov

Re: Comments on Notice of Intent to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation and Prepare Associated Environmental Impact Statements or Environmental Assessments.

Dear Sage Grouse Plan Revision Team:

The Public Lands Council ("PLC"), along with its national affiliates the National Cattlemen's Beef Association ("NCBA") and American Sheep Industry Association ("ASI"), appreciates the opportunity to provide comments on the Notice of Intent to Amend BLM's Land Use Plans that were amended or revised in 2014 and 2015 regarding Greater Sage-Grouse conservation in the States of California, Colorado, Idaho, Nevada, Oregon, Wyoming, North Dakota, South Dakota, Utah and Montana ("2015 Sage-Grouse Plans") and Prepare Associated Environmental Impact Statements or Environmental Assessments. 82 Fed. Reg. 47248 (Oct. 11, 2017).

In May 2015, BLM and the Forest Service released their respective final Environmental Impact Statements, amending 98 Western resource management plans. The decision documents issued in September 2015 included four RODs, one from each agency for the Great Basin region and one from each agency for the Rocky Mountain region. The major planning effort involved coordination between the BLM and the Forest Service. These two agencies manage about half of the 165 million acres where sage grouse are spread among various Western BLM districts and National Forests ("federal lands").

While the amended plans did not mandate any specific on-the-ground conservation actions, they identified and imposed significant land-use restrictions within vast areas of federal lands. The plan amendment decision was met with substantial opposition, and nine states appealed. Beginning in the

mid-2000s, many Western States had already begun developing their own sage grouse management plans at the request of the federal government, with the goals of both addressing various conservation challenges unique to each state and preventing restrictive federal management plans or a species listing under the ESA. Western States' sage grouse management plans have been the primary driver of improvements to the species range-wide. These affected states have attempted to avoid a restrictive and economically damaging federal sage grouse management plan and address the different management concerns unique to each state. To date, 11 affected Western States have issued state management plans. The current administration is now reconsidering portions of the 98 BLM and Forest Service plan amendments made by the prior administration, and BLM's scoping request is an important first step in that direction. A key concern is how to remove the overly-restrictive components of these amendments, which have been criticized as rushed, too restrictive on land use, and procedurally flawed.

PLC represents livestock ranchers in public policy and federal legislation as part of PLC's mission to preserve the natural resources and unique heritage of the West. Public land ranchers own some of the most productive private land and manage vast areas of public land, accounting for critical wildlife habitat and a huge portion of the nation's natural resources. PLC works to maintain a stable business environment in which livestock producers can conserve the West and feed the nation and world. PLC is a national organization dedicated to representing approximately 22,000 ranching families operating on federal lands in the Western United States. Those 22,000 families graze livestock and steward approximately 250 million acres of federal lands while owning approximately 140 million acres of adjacent private land. As such, PLC is committed to rangeland and farmland use programs that allow their members to continue the responsible and productive use of federal lands within their respective states.

The following are key concerns PLC has about potential amendments to the 98 affected RMPs and Forest Plans.

Plan Amendments are Necessary. As an initial matter, PLC believes that the anticipated plan amendments are necessary. Plan maintenance would not provide the necessary authority to make the significant changes that are needed to properly address sage-grouse management while avoiding overly-restrictive criteria that unnecessarily limits grazing. Plan maintenance can only be used to reflect minor changes in data, not to change plan terms, conditions, or decisions of an approved RMP, or to create new or revised policy. 43 C.F.R. § 1610.5-4.

Defer to State Affiliates Concerning State Conservation and Grazing Management Practices. PLC appreciates BLM's continued acknowledgement of the multiple-use and sustained yield mandates of FLPMA, the Forest Service's corresponding management duties under NFMA, and the agencies' recognition that well-managed grazing can be beneficial to Greater Sage-Grouse (GRSG). PLC believes - and science proves - that sage-grouse conservation and livestock grazing can beneficially co-exist. Top threats to the GRSG include rangeland wildfire, invasive weeds, and development pressure, not livestock grazing. Livestock grazing is not even in the top-ten list of threats. Yet, despite this, BLM and the Forest Service have improperly implemented landscape-wide regulatory changes on the grazing livestock industry for purposes of conserving habitat for a single species through an inflexible framework that is overly restrictive and fails to account for the very site-specific conditions necessary to make informed decisions.

As noted above, 11 Western States' sage-grouse management plans have been the primary driver of improvements to sage-grouse range-wide. Currently, there is a lack of evidence that the existing management approaches under each of the Western States' individual state conservation plans are insufficient. To the contrary, state-led management is critical since the factors driving habitat loss and fragmentation vary greatly from state to state. As such, PLC defers to the positions of its state affiliates[1] about whether RMPs and Forest Plans for federal lands within the geographic regions of individual states should be amended, and whether such amendments should include some or all of the sage-grouse conservation measures and strategies contained in the individual state plans. To the extent any of PLC's state affiliates submit scoping comments regarding BLM's intent to amend the 2015 Sage-Grouse Plans, PLF joins and incorporates those comments. To the extent any of PLC's state affiliates submit comments or concerns that vary from PLC's overall comments contained in this scoping letter, PLC conforms its comments with respect to those of its state affiliate regarding local issues.

Unrealistic Funding and Ability to Implement. All guidance issued by BLM, including all seven instruction memoranda (IMs 2016-139 through 2016-145) to provide guidance on certain elements of the 2015 Sage-Grouse Plans, note that implementation will necessarily require substantial future work by BLM – in addition to the *98 land use plans already amended* – with no proportionate increase in budget or staffing for BLM. Without commenting on the substance of any particular case, it is well known that BLM is already under intense litigation pressure from environmental groups and others throughout the Western U.S. due to continuing delays in completing mandatory statutory deadlines, failing to comply with NEPA's procedural requirements, and not completing required monitoring. We are extremely concerned that BLM will simply add more work to its already full decisional plate with absolutely no realistic ability to fund or implement those decisions meaningfully.

As a result, amending the 2015 Sage-Grouse Plans in a manner which undertakes more substantive work, rather than carefully conforming to existing state conservation plans where appropriate, will only result in more litigation, and it will not benefit the resource or those who depend upon the resource for their livelihoods. Any amendments must be designed to allow BLM to affordably and efficiently implement workable conservation in light of BLM's finite resources.

Use Existing Habitat Assessment Framework (HAF) or Adopt State Models. BLM already has a system in place for Rangeland Health Assessments and standards to determine habitat suitability. BLM lacks the budget and training to implement the Habitat Assessment Framework and already has sufficient monitoring protocols that

[1] PLC has state affiliates in California (California Cattlemen's Association, California Wool Growers Association), Colorado (Colorado Cattlemen's Association, Colorado Livestock Association, Colorado Wool Growers Association), Idaho (Idaho Cattle Association,
Idaho Wool Growers Association), Nevada (Nevada Cattlemen's Association, Nevada Wool Growers Association), Oregon (Oregon Cattlemen's Association, Oregon Sheep Growers Association), Wyoming (Wyoming Stock Growers Association, Wyoming Wool Growers Association), North Dakota (North Dakota Stockmen's Association, North Dakota Lamb & Wool Producers Association), South Dakota (South Dakota Cattlemen's Association, South Dakota Sheep Growers Association), Utah (Utah Cattlemen's Association, Utah Wool Growers Association) and Montana (Montana Stockgrowers Association, Montana Wool Growers Association).

have been developed and implemented through its existing rangeland health assessment. At most, he Habitat Assessment Framework should be applied as a guideline and only at appropriate scale – never at the allotment level or for grazing decisions. We believe that permit requirements together with the existing Rangeland Health Assessment monitoring provide all of the necessary standards and should remain the only required tools for assessing livestock grazing. BLM should stop using the HAF, including tables 2-2, at the site scale to inform management of grazing permits (for example, for perennial grass height). Recent science (citations below paragraph) shows grass height not to be as critical as previously thought. Management of fine fuels, and implementation of flexible grazing rotation systems that create resistant and resilient native bunch grass systems are much more pertinent to the long-range survival of Sage Grouse. Decisions about the application of HAF at the higher orders should be coordinated with the Us Fish & Wildlife Service (USFWS) to ensure the service's ability to continue to support a decision not to list the species. If another method is determined to be needed, BLM should adopt and incorporate models that states like Oregon have included in their state conservation plan, which is more ecologically based, flexible in terms of its guidelines, and compatible with other conservation plans than HAF. HAF is not sustainable over the long term given BLM's commitments and current level of funding.

Allow Proper Grazing and Compatible Grazing Practices. Implementing the 2015 Sage-Grouse Plans has resulted in eliminating livestock grazing on some RNAs and ACECs. There is no rational reason under either FLPMA or NFMA to close certain areas to livestock grazing, particularly where proper grazing is compatible with the ecology of the local areas. We are further concerned that incorrect assumptions and speculation, rather than science, is being used to support these broad closures. Many RNAs have accommodated livestock grazing since their inception, which has been found to be compatible with sage-grouse conservation by reducing fuels, helping to control the spread of invasive species, providing a food source for young chicks, and maintaining rangeland health. The agencies should more explicitly recognize that livestock grazing practices complement sage-grouse conservation and have improved habitat by sustaining a diversity of plants that are important to the greater sage-grouse and by reducing the risk of wildfire that destroys the habitat.

No Permit Modification Pending NEPA Analysis and Documentation. The agencies should provide certainty that they will not be modifying any grazing permits based on greater sage-grouse population or habitat criteria pending finalization of the land use plan amendments anticipated by BLM's latest scoping notice and the anticipated Forest Service scoping notice. For all of the reasons set forth in these comments, modifying grazing permits based on these criteria is unworkable.

Remove Constraints to Manage Water Development. Members of PLC have constructed and maintain ditches, canals, water diversion structures, guzzlers, watering troughs, and watering holes within federal allotments and sage grouse focal areas (SFAs), priority habitat management areas (PHMAs), general habitat management areas (GHMAs), important habitat management areas (IHMAs), and other habitat management areas (OHMAs). These water developments also occur within lek buffer zones where activity is restricted during the breeding season under the 2015 Sage-Grouse Plans. These improvements and features represent a significant investment and are absolutely necessary for our members' agricultural and ranching operations. In addition, developments have proven to be very beneficial to numerous wildlife species including grouse. BLM should amend the 2015 Sage-Grouse Plans within affected Western States to remove constraints and interference with our members' ability to maintain and operate these water developments.

De facto Creation of ACECs. BLM absolutely must reevaluate its creation and decision to set aside *millions of acres of federal lands designated off-limits* as SFAs, PHMAs, GHMAs, IHMAs, and OHMAs because such designations have unlawfully created de facto Areas of Critical Environmental Concern (ACECs). BLM should avoid using SFAs and these other de facto land allocations as a tool to prioritize the review or evaluation of grazing allotments. These areas were adopted without sufficiently complying with the required notice and public comment and plan amendment procedures, and their creation violates FLPMA, NFMA, and NEPA. These areas were not properly analyzed in adopting the 2015 Sage-Grouse Plans. Several levels of sage-grouse habitat with associated restrictions already existed, and if specific areas of concern warrant added restrictions they should be addressed locally through flexible guidelines on a site-specific basis.

Rescind the Instructional Memoranda. BLM should rescind the seven instructional memoranda (IMs 2016-139 through 2016-145) that provide guidance on certain elements of the 2015 Sage-Grouse Plans and issue replacement IMs for the interim period while plan amendments are being prepared. Key concerns about the IMs include the following:

IM 2016-139. This IM outlines use of BLM's Assessment, Inventory and Monitoring ("AIM)" to monitor and assess aquatic systems. This framework contains unproven recommendations for monitoring and should be replaced with BLM's 2011 Multiple Indicator Monitoring ("MIM") system. Water quality monitoring should be managed and maintained by states consistent with EPA requirements and protocols set forth in the Natural Resources Inventory ("NRI"). The NRI field protocol is already an accepted protocol for data collection to estimate conditions and trends across BLM lands. NRI, along with supplemental legacy data, is a better protocol to address habitat dynamics, and relying on HAF is unnecessary and duplicative.

IM 2016-141. This IM sets priorities for processing grazing permits and leases in sage-grouse habitat. BLM already has a process for prioritizing allotments. The IM unlawfully elevates the sage-grouse to a priority species, and it should be vacated.

IM 2016-142. This IM provides guidance for incorporating thresholds and NEPA analysis into grazing permits for lands within SFAs or PHMAs. This IM is duplicative of BLM's annual monitoring, contains thresholds generally not influenced by grazing (e.g., sagebrush canopy and tree cover requirements), and introduces concepts that do not belong in permit terms. These adaptive management triggers should be reversed. The Habitat Objective table should also be deleted. The Table is being strictly implemented and is contrary to establishing objectives based on site-specific conditions. The IM also relies on HAF to assess habitat conditions along with Habitat Assessment Summary Reports. HAF should be eliminated in favor of standards and guidelines based on existing evaluation practices, and the report requirement should be rescinded.

IM 2016-144. This IM requires policy on use of sage-grouse HAF to assess habitat, and under what circumstances habitat assessment is required. This entire IM and HAF framework should be eliminated. HAF is designed for single-species management, contrary to both the mandates of BLM and

the Forest Service. Implementing AIM and HAF is highly variable between states and field offices, results in excessive data collection and duplicative Habitat Assessment Summary Reporting, and should be abandoned in favor of legacy monitoring and Rangeland Health Assessments, including use of NRI protocols and MIM.

Surface Disturbance Cap and Mitigation Policy. Under existing direction, disturbance caps are applied to all habitats whether public or private, and BLM and the Forest Service can preclude authorizations on federal lands to compensate for disturbances on private land. We believe that the 3% anthropogenic disturbance feature found in the 2015 Sage-Grouse Plans is not supported by the best available science, and that the calculation methods BLM uses are significantly different than the research BLM relies on to support the 3% cap. The 1% decade cap was also not analyzed, and it is not supported by science. There also is a lack of best available science and policy support for excessive, one-size-fits-all stubble height requirements and expansive lek buffers.

Travel Management Plan. There is limited research on the impacts of roads on sage-grouse and what scant research exists is conflicting. Implementing travel management plans across all BLM districts within affected Western States on a large scale within set time frames is irrational, unnecessary, and completely unrealistic. Potential conflict areas (for example, high traffic roads close to leks) should not be established in BLM RMPs, but instead should be addressed locally on a site-specific basis with flexible guidance for possible restrictions that can account for seasonal, type of use, or date/time restrictions, as needed based on local conditions.

Manage Lek Buffers on a Site-Specific Basis. Lek buffers increased dramatically in size and breadth in terms of restrictions during the plan amendment processes for the 2015 Sage-Grouse Plans. If certain areas around leks require closure due to certain activity, such as restrictions on grazing within lek buffers, those areas should be identified and managed on a site-by-site basis. Since there is no single distance that is appropriate for all populations and all habitats across the range, it makes abundant sense to revise the RMPs so that decisions about distance can be made flexibly based on local conditions, using guidelines that assess the specific topography and vegetation near the lek.

Grazing Season Language. Language under the 2015 Sage-Grouse Plans about timing and location of livestock turnout impacting livestock concentrations on leks during the breeding season is also vague and unclear and leads to uncertainty and ambiguity for ranchers and agency range staff.

Comply with the WHBA and Avoid Unlawful Range Degradation. BLM and the Forest Service are currently mismanaging our federal lands by adopting science-based maximum Appropriate Management Levels ("AML") for wild horses under the Wild Horse and Burros Act ("WHBA"), but then failing to act to achieve AML – and in many territories, failing to take sufficient action to even come close to achieving AML. As a result, overpopulations of excess wild horses well above the AML are causing serious, permanent degradation to rangeland and riparian areas. As part of any conservation strategy, BLM must first comply with the law, comply with its own management directions for achieving AML, and act sufficiently to achieve and maintain AML. Attempting to achieve balance without achieving AML violates the WHBA, as well as the multiple use and plan consistency mandates

under FLPMA and NFMA. BLM is already overcommitted financially, and it makes little sense to undertake further major tasks where the agency is unable to complete the backlog of mandatory duties it already has.

Thresholds on Grazing Permits. This concept was adopted without sufficiently complying with the required notice and public comment and plan amendment procedures. Creating "thresholds" foreign to grazing permits without such process and public vetting violates FLPMA, NFMA, and NEPA. The public did not have an opportunity to comment on this. BLM already had the authority under current grazing law to make immediate changes to livestock management if grazing management is deteriorating habitat. Additional thresholds that lack flexibility are unnecessary and unlawful.

Primary Threats of Wildfire and Invasive Species. Rather than address the primary threats of juniper encroachment, wildfire, and the spread of invasive species, the 2015 Sage-Grouse Plans increased regulatory measures on many secondary and perceived threats that are relatively insignificant. This approach will have negative impacts on sage-grouse populations and is detrimental to rural economies. BLM must direct resources and address threats directly and correlate their importance to sage-grouse. Wildfires are among the top threats to sage grouse along with invasive species such as cheatgrass, which is positively correlated with wildfire. Wildfires result in habitat loss and fragmentation of sage-grouse habitat and have devastating social and economic effects on rural communities.

Any plan amendment must incorporate measures acknowledging that control of invasive species through active management and reduction of fine fuels is key for controlling fuel loads and avoiding wildfire. The best available science demonstrates that properly grazed rangeland is more resilient and resistant to fire than ungrazed landscapes. Control of invasive species through active management and reduction of fine fuels is an instrumental part of controlling excessive fuel loads. Vegetation treatments such as controlled, prescribed fire and manipulation of canopy cover can also improve rangeland health to benefit sage-grouse and increase livestock forage. Range specialists and researchers have concluded that grazing is an important and effective tool for the prevention and mitigation of wildfires, especially in moderate fire conditions. For example, flame length can be significantly reduced in areas where grazing has occurred and can result in a mosaic burn or gaps across which fire will not jump. Any plan amendments should be designed to prevent excessive fuel loads that will contribute to more frequent and intense range fires harmful to sage-grouse, healthy range, and adjacent private lands. BLM must use the best available science about the negative effects of reduced grazing on the incidence, intensity, and damage from wildfire.

In sum, sagebrush habitat supports an agricultural economy critical to rural communities and generates over $1 billion in economic activity. States, ranchers, farmers, energy developers, and other stakeholders have combined in an unprecedented effort to collaborate to conserve key sage-grouse habitat and avoid listing to the greater sage-grouse, while also continuing to promote sustainable economic use of the resource. We are very concerned that BLM might continue to duplicate state conservation and management efforts unnecessarily. We cannot emphasize enough how important it is

for BLM to abandon its unworkable, unfunded framework in favor of planning designed to provide better protection and resource balance using a flexible, site specific approach, rather than simply more duplicative, cost-prohibitive federal regulation. We hope that our feedback is useful in considering possible amendments to the 2015 Sage-Grouse Plans, and that BLM will continue to recognize the ecological and economic importance of livestock grazing.

Sincerely,

Dave Eliason, President	Craig Uden, President	Mike Corn, President
Public Lands Council	National Cattlemen's Beef Association	American Sheep Industry Association

Office of the Board of County Commissioners
Cassia County, Idaho
1459 Overland Avenue, Burley, Idaho 83318
Phone: 208-878-7302

Leonard M. Beck, Chair
Commissioner Dist. 1
lbeck@cassia.gov

Robert "Bob" Kunau
Commissioner Dist. 2
bob.kunau@cassia.gov

Kent R. Searle
Commissioner, Dist. 3
ksearle@cassia.gov

Office of the Board of County Commissioners
Power County, Idaho
543 Bannock Avenue, American Falls, ID 83211
Phone: 208-226-7610

Ronald Funk, Chair
Commissioner Dist. 1
rjffarms@gmail.com

William Lasley
Commissioner Dist. 2
blasley@co.power.id.us

Delane Anderson
Commissioner, Dist. 3
anderson.delane@gmail.com

June 13, 2024

Patricia Deibert, BLM HQ
National Sage-Grouse Conservation Coordinator
Bureau of Land Management
440 W. 200 S., Suite 500
Salt Lake City, Utah 84101

Quincy Bahr
National Sage-Grouse Project Manager
Bureau of Land Management
440 W. 200 S., Suite 500
Salt Lake City, Utah 84101

BLM_HQ_GRSG_Planning@blm.gov and
https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Cassia and Power Counties, Idaho Comments Regarding the Greater Sage-Grouse Draft Resource Management Plan Amendment/Draft Environmental Impact Statement (Draft RMPA/EIS) Issued March 15, 2024 (BLM_HQ_FRN_MO4500174493)

Dear Ms. Deibert and Mr. Bahr;

Please consider the following comments from Cassia County and Power County, Idaho (herein referred to as the" Counties"), local governmental agencies actively engaged in current and past sage-grouse NEPA analyses affecting land within their jurisdiction. The Counties have been commenting on BLM NEPA activities regarding sage-grouse and transmission lines since 2009. All previous comments submitted by the Counties on items within the scope of the current Draft RMPA/EIS are incorporated by reference.

Introductory Overview – Induced Impacts to Private Lands

The most significant industry in the Counties is agriculture, particularly irrigated agriculture, and associated agricultural processing. Agricultural activities provide the livelihood for thousands of low income and/or minority County citizens, creating environmental justice concerns. The associated taxes from the agricultural industry support virtually all public services in the Counties.

While the Draft RMPA/EIS addresses Greater Sage Grouse ("GRSG") management on federal public lands, BLM must recognize that management choices made by it with respect to public lands have direct impacts on the Counties and their citizens outside public lands. In particular, to the extent that BLM management of GRSG makes large swathes of public lands off limits to public use for utility corridors, high-voltage transmission, and renewable energy development, it pushes that development onto private lands that have a higher and better use preserved for agriculture. The effect of GRSG management choices on agricultural lands and food production beyond livestock grazing have not been addressed in this Draft RMPA/EIS, yet there will be significant direct and indirect adverse impacts to these resources.

This comment letter discusses two important issues:

A. Omissions that the Counties request be addressed by BLM in the next version of the document include:

    1. The failure to consider existing County Comprehensive Land Use Plans and Zoning Codes and resultant socioeconomic effect of induced destruction of agricultural lands by making public lands less available for "public" utility and energy uses (Attachment A, B, C and D); and
    2. The omission of important environmental justice statistics regarding agricultural employment and unanalyzed significant adverse impacts to immigrants and minority communities.

B. Issues and management concerns that are detrimental to flexibility in siting infrastructure, especially transmission lines, on public lands:
    1. BLM's adoption of unduly strict disturbance caps
    2. Large lek buffers, as set forth below,
    3. Predator management
    4. Multiple Use/Sustained Yield

Cassia County and Power County are generally supportive of Alternative 5 proposed in the Draft RMPA/EIS, subject to modification of that alternative in a way that will permit – whether through mitigation or minimization efforts – utility developers the ability to route/site utility corridors, high-

voltage transmission, and renewable energy development on public lands without those lands being made off-limits when those developments are being sited.

Specific Comments

ES-1: "*The U.S. Fish and Wildlife Service identified the threats to GRSG as part of evaluating whether GRSG warranted being listed as threatened or endangered in 2005, 2010 and 2015. Many of these threats have been addressed in the BLM's prior GRSG planning efforts in the 2014/2015 plan revisions and amendments, and again in all states except Montana and the Dakotas with a 2019 series of state-specific amendments. Despite years of management attention from multiple state and federal agencies GRSG habitat continues to be impacted and lost.*

The BLM has prepared this Draft Resource Management Plan Amendment (RMPA)/Draft Environmental Impact Statement (DEIS) to analyze potential amendments to specific GRSG goals, objectives, and management actions contained in 77 existing RMPs to enhance GRSG conservation through management of GRSG habitats on BLM-administered lands. These amendments seek to continue providing the BLM with locally relevant decisions that achieve rangewide GRSG conservation goals consistent with the agency's multiple use and sustained yield mission, and GRSG management efforts with Federal, State, local, and Tribal partners. The ten-state planning area includes nearly 121 million acres of BLM-administered public land. GRSG habitat management areas occur on approximately 69 million acres and are the focus of this effort."

> **Comment:** The complexity of the sage-grouse issue requires BLM refine its preferred alternative in a way that makes it more flexible to energy infrastructure. Alternative 5 needs to work for private landowners as well as public land managers.
>
> The public is not well served by the overwhelming nature of the broad-based, continuous sage-grouse NEPA processes with no end in sight. The fact that local governments have to start over with each NEPA analysis, without their prior input being carried forward, is inconsistent with the intent of NEPA.
>
> First, local governments in Idaho responded to USFWS considerations of whether the sage-grouse warranted listing in 2005, 2010 and 2015. Numerous special interest groups also responded, lawsuits ensued, and countless time and money went into the paper chase.
>
> Second, County officials and other entities tried to make sense of draft and final resource management plans, resource management plan amendments and draft and final RMPA/EIS analyses related to sage-grouse. These NEPA processes covered almost 121 million acres of BLM administered lands over ten states, including lands within said Counties.

BLM states that they tried to make the analyses and decisions "locally relevant".

However, BLM is dealing with massive complexities, opposing interests, and constantly changing data regarding sage-grouse and their habitat as well as national policies that affect land uses.

The result is a rush to meet a court deadline and an analysis that fails to consider past input by local governments and the cumulative impacts of the alternatives analyzed in the current NEPA process. Though the Counties agree that Alternative 5 is the best alternative within the list of choices, they request NEPA analysis revisions to reflect more information about impacts to private agricultural land, environmental justice implications and multiple use/sustained yield metrics on BLM managed public lands, resulting in more flexibility in energy corridor sitings.

Agricultural lands and food production beyond livestock grazing have not been addressed in the current version of the Draft RMPA/EIS, yet there will be significant direct and indirect adverse impacts to these important resources. Too many land protection policies, regulations and legal dictates have been stacked up in ways that result in a failure to analyze what is happening to private land and environmental justice matters as a direct consequence of the federal government's decisions to make use of federal lands more difficult . The unanalyzed impacts, especially to agricultural lands and low income/minority workers, need to be addressed now in this NEPA process.

Lawsuits will go forward. The agency will continue to attempt to shunt impacts, including pushing energy infrastructure onto private agricultural land. This approach seems easier for federal agencies than dealing with this Nations' lack of well-thought-out long-term policies regarding energy and food security. The GRSG habitat protection policies are going to result in significant unintended and interrelated direct and indirect adverse impacts as well as significant cumulative adverse impacts to private agricultural land and minority/low-income workers that must be analyzed within the NEPA Framework.

Idaho's agricultural land is a vital resource that should be protected and kept free from the development of high voltage transmission lines whenever possible. Agriculture is a key driver of Idaho's economy, contributing approximately $12 billion annually ($8.4+ billion in potatoes, hay, corn, wheat, barley, corn, hops, chickpeas and other food crops plus $3.5 billion in dairy milk production) in and supporting 1 in 8 jobs in the state.

Idaho's fertile soil, abundant water resources, and favorable climate make it one of the top agricultural states, ranking in the top 10 nationally for production of over 25 different commodities including potatoes, barley, alfalfa hay, sugar beets, and corn (https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=IDAHO).

Siting transmission lines on prime farmland permanently removes a portion of that land from agricultural production. The footprint of the transmission towers, access roads, and

related infrastructure disrupts and fragments farms, making them less efficient to operate. The presence of transmission lines also limits future land use options for farmers.

Furthermore, there are potential safety risks and liabilities that come with siting high voltage lines on working farms. Transmission lines present hazards for workers operating tall farm equipment. Irrigation equipment, aerial data collection and pesticide applications, and certain other farming activities need to be restricted near power lines. Crops directly under the lines may not grow as well. If a tower or line comes down, it could damage crops and equipment, cause wildfires and endanger workers. Farmers and the utility could face legal liabilities in the event of accidents and wildfires.

From an economic perspective, taking farmland out of production means less revenue generated and fewer jobs supported by Idaho's agricultural sector. It's in the long-term economic interest of the nation to protect its agricultural base including minority/low income workers. Cassia and Power Counties strongly believe that retention of existing productive farmland has more enduring value to the nation than resultant energy from poorly sited transmission lines.

While the development of energy infrastructure is important, every effort should be made to avoid fragmenting and taking prime agricultural land in Idaho out of production when siting new high voltage transmission lines. Where possible, transmission lines should be routed through less productive land, along existing transmission or road corridors, or in areas zoned for industrial use. Cassia and Power Counties prioritize preserving their unique and highly productive agricultural land when overseeing the planning and siting of new energy infrastructure in the Counties. The long-term costs of losing prime farmland and associated low income/minority workers are simply too high.

Chapter 1 of the Draft RMPA/EIS should include issues and management concerns regarding agriculture and environmental justice that should have been known to BLM and included in the current NEPA analysis:

- Disruption of farming and ranching activities, loss of jobs and disruption of wildlife use due to relocation of transmission/power line construction to private lands due to GRSG
- Cost of revegetation after construction
- Loss of control of access and interference of access during construction
- Ongoing burden of transmission/power line easement maintenance
- Continuous weed and erosion control due to the presence of the transmission/power line easement
- Loss of high value agricultural and ranch land and associated jobs as well as loss of wildlife habitat due to excessive erosion due to said easements

- Duplication of processes including irrigation, seeding, fertilizer and pesticide applications on each side of the transmission/power line
- Cultivation loss and increased harvest costs
- Loss of human, livestock and wildlife food production due to lost and damaged acreage (soil compaction, erosion, etc.)
- Increased insurance premiums
- Crop rotation limitations
- Loss of future opportunities including jobs, development and wildlife habitat opportunities
- Loss of rental/lease value
- Impairment of TV, radio, cellular and satellite reception
- Loss of ability to use low altitude aerial (crewed and uncrewed) means of seeding, fertilizer and pesticide applications, crop analysis using specialized sensors and crop picking with uncrewed aerial vehicles
- Temporary and permanent loss of contracted acreage leased to Idaho Fish & Game/potential loss of these contracts
- Increase in noxious and invasive weeds that inhibit use of land by farmers and wildlife
- Loss of viewshed/visual resources
- Loss of income to low income and/or minority workers
- Hindrance of future growth opportunities
- Audible noise impacts to humans, livestock and wildlife

The economic impacts to agriculture in Cassia County alone are estimated to be greater than $2 billion over a ten-year period from a single energy infrastructure project: Gateway West Transmission Line Project. The amount of one-time mitigation being discussed by the project proponent of the Gateway West Project, PacifiCorp, is significantly below the real costs.

Cassia and Power Counties request BLM analyze the topic of energy infrastructure projects being shunted to private land to protect sage-grouse habitat. In particular, please include issues, management concerns, the affected environment, environmental justice, consequences and mitigation of this subject matter in sufficient detail to allow the BLM decision makers and the public to fully understand the significant adverse impacts of the BLM decision to prioritize sage-grouse habitat so high and private agricultural land so low.

While the specific impacts vary depending on the individual farm and transmission line, the items listed herein are some of the most problematic potential impacts that high voltage transmission lines can have when sited on prime agricultural lands in Idaho. Recognizing these impacts is important for making informed decisions about shunting transmission line sitings away from BLM managed lands, onto agricultural lands. Cassia

and Power Counties have a fiduciary duty to protect the long-term productivity and value of farmlands within their respective jurisdictions.

Like the Counties, the federal government should also make protection of agricultural land one of the highest priorities for land use. Current federal policies that ignore natural food production risk jeopardizing the stability of our country. The current prioritization of public land for sage-grouse over agricultural production could create a national crisis due to food shortages. The impacts of potential current and future food shortages need to be analyzed in relation to federal land use priorities that impact private agricultural lands.

The government's desire to protect GRSG habitat on BLM lands at the expense of private landowners and agricultural lands will result in too many significant unanalyzed adverse impacts to ignore.

NEPA requires a more robust impact analysis, including cumulative impacts of all consequences, whether they are intended or not. The decision to protect sage-grouse habitat at the expense of other aspects of society needs to include a more detailed analysis of all costs to local, state and national interests.

ES-2: "*The BLM is focusing on the following rangewide management actions:"*

Comment: Please add "Minimization and mitigation of impacts to energy and agriculture"

ES-3, ES.3.1: *Issues Retained for Further Consideration in this RMPA/EIS*

Comment: Please add "Areas of Energy Infrastructure and Agricultural Concern" and create alternatives and analyses parallel to the depth of those for ACECs. The energy corridors are analyzed in relation to BLM lands. The indirect impact analysis must include a heighted level of scrutiny to analyze loss of important private land including agricultural lands due to shunting land disturbances onto private land to avoid the loss of sage-grouse habitat.

When BLM performs a NEPA analysis, they are required to address direct and indirect consequences of their actions. The protection of sage-grouse habitat results in BLM pushing energy corridors onto private agricultural lands within Cassia and Power Counties, over the objection of the local government and private landowners. A more detailed analysis of this impact must be performed in the current NEPA analysis in conjunction with the County.

E-7: "*Although the adverse economic impacts under Alternative 3 are likely to be concentrated in mineral extraction and livestock production sectors, reduced economic activity in public land-dependent sectors will have a ripple effect which causes economic activity in other sectors of the economy slow. Changes in economic conditions could affect rural quality of life and reduced levels of mineral development which could lead to shifts in the local economic base that create*

higher levels of unemployment and underemployment in some mineral dependent economies. Displaced workers in more diversified economies are likely to have an easier time finding new employment while rural residents may have to commute further for work or may have to consider re-locating out of the area. Those lacking financial resources to either commute further or relocate will be especially impacted. The scale of closures under Alternative 3 would have adverse impacts on social and economic conditions in a large number of communities and could affect fiscal budgets at both the local and state level of government, especially in states like Wyoming where taxes on mineral production serve as the largest source of tax revenue for multiple levels of government. However, Alternative 3 would provide the greatest protection of nonmarket values for GRSG and sagebrush ecosystems."

Comment: The adverse economic impacts under Alternative 3 should include additional food producers besides livestock operators. Though crop and dairy farmers are not growing food directly on lands managed by BLM, the changes in BLM land management due to the sage-grouse will adversely impact these lands. Agricultural land for farming including dairy farming is being lost to energy corridors, energy development (fluid and mineral extraction, renewable energy projects including wind and solar, road construction, etc.) and other developments that are being scaled back on BLM managed land and shunted to agricultural land.

Without the consent of private landowners, BLM has directed the rerouting of proposed high power transmission lines including the Gatewest West Transmission Project, onto private agricultural land in Cassia and Power Counties. The decisions resulting from the current NEPA process will cause further shifting of public projects to unwilling private landowners.

The current NEPA process has not adequately addressed the magnitude of the shift of impacts to private landowners within Cassia and Power Counties and beyond. The current Draft RMPA/EIS does not meet the legal requirement to analyze indirect and consequential impacts of the actions of the federal government and is therein inadequate in its current state.

'**Page 1-4:** "*Based on internal review informed by public and State partner input, the BLM is focusing on the following rangewide management actions:"*

Comment: Add "Agriculture".

Page 1-8: *"Social and economic conditions, including environmental justice"*

Comment: Add "and agriculture".

Page 1-9: "*After reviewing management actions from the 2015 and 2019 GRSG RMPA efforts across the range, this issue was found to be limited to certain states. In those states, management would not require burying powerlines or co-location if it would negatively impact*

GRSG. These strategies and associated impacts would be considered during project planning and impacts documented as part of that decision-making process. This approach satisfies the consideration requirement in existing GRSG management."

Comment: Add an analysis regarding burying or co-locating powerlines to benefit agricultural landowners adversely impacted by BLM decisions that force routing of transmission line construction onto private agricultural lands to avoid GRSG habitat and associated benefit of reducing the risk of powerline related wildfires.

Page 1-10: *Climate change*

Comment: If BLM chooses to discuss climate change in this NEPA analysis, they need to include a more balanced analysis. The Counties request BLM add the following information to the climate change topic:

Additional perspectives regarding greenhouse gas emissions and facts about the rapidly evolving science of carbon sequestration and methane recapture need to be included.

We request BLM add the following to its climate change analysis:

- Analysis of impacts on carbon sequestered on irrigated agricultural lands when BLM GRSG restrictions divert utility, energy, and renewable energy activities to private agricultural lands.

- Information about Cassia County dairy farms capturing methane as a source of energy. See https://newsradio1310.com/company-plans-to-turn-cassia-county-manure-into-power/

That information should include a more detailed analysis of new technologies that are changing greenhouse gas projections and computer models. Please include the benefits of carbon sequestration provided by agricultural and farmlands, which can have a significant impact on the carbon footprint. Agricultural and farmlands are high in soil organic carbon, making these areas climate resilient, but also important for CO_2 removal from the atmosphere, because their soils have higher carbon stocks -or carbon concentration- than arable soils.

Carbon sequestration is not as simple as having crops and grass, as additional "management actions" are required in order to change the course of greenhouse gas (GHG) emissions and climate models. Carbon sequestration occurs when the uptake of CO_2 (photosynthesis) is greater than emissions (respiration).
To include carbon sequestration it is important to ensure that the analysis of farms and ranchlands includes the 'full cycle of carbon' and promotes effective carbon sequestration as an actual mitigation action against climate change (along with emission reductions).

Methane is a more potent ('stronger') greenhouse gas compared to CO_2 but has a shorter lifetime in the atmosphere (about twelve years) https://climate.nasa.gov/vital-signs/methane/?intent=121. This means that methane only stays in the atmosphere on average about twelve years.

The methane produced by dairy as a result of enteric fermentation and manure comes from biogenic sources. This means that the feed that the cow eats has sequestrated CO_2 from the atmosphere when it grows. Thus, the methane from the cow and the manure are within the 'short' (biogenic) carbon cycle, as opposed to the 'long' (fossil) carbon cycle, as is the case of combustion of fossil fuels.

Since methane is a short lived GHG, the change in emission rate affects how methane impacts the temperature. There has been major progress in the methods developed to assess the actual impact of methane on temperature change, which resulted in the Global Warming Potential* (GWP*).

The research behind this new methodology has demonstrated that the true climate impact of methane is not currently being reflected because current metrics don't recognize that methane breaks down in the atmosphere over the course of 12 years.

We request the BLM add information about the rapidly growing "renewable natural gas" programs across the nation and their ability to harvest methane as a renewable form of energy. Fifty percent of large dairy farms in Cassia County are now working with renewable natural resource companies to capture their methane gas for renewable energy production.

BLM needs interdisciplinary collaboration to truly analyze impacts. This involves exploring non-government expert opinions from various disciplines, including climatology, atmospheric science, oceanography, geology, ecology, economics, and social sciences, to provide a comprehensive analysis of the complex interactions and feedback within the ecosystem and the sage-grouse specific subset of the ecosystem.

Also required in relation to the climate change subject is an uncertainty analysis. Cassia and Power Counties request BLM provide a rigorous assessment of the uncertainties associated with climate models, data sources, and projections, as well as the development of methods to quantify and communicate these uncertainties effectively.

Page 1-12: "*In NEPA, Congress directs "all agencies of the Federal Government…[to]…utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment" (42 USC 4332(A)). This EIS and RMPA examine a range of alternatives to resolve the issues in question*."

Comment: NEPA clearly requires BLM to document potential adverse impacts to agricultural land and environmental justice that are likely due to shifting transmission lines, road construction and other land uses off BLM managed lands onto private agricultural lands in the name of saving sage-grouse habitat. The current NEPA analysis is woefully inadequate in this respect.

The draft EIS also fails to examine the impact of GRSG decisions that would force conversion of prime farmland, as required by the federal Farmland Protection Policy Act, Pub. L. 97-98, 7 U.S.C. 4201 et seq.

Page 1-12: "1.*8 CONSISTENCY WITH STATE AND LOCAL LAND USE PLANS AND PROGRAMS AND POLICIES THEREIN*"

Comment: Cassia and Power Counties and many other local governments within the RMPA/EIS planning area have land use plans what were not analyzed for consistency within the current NEPA process due to the massive land base and court ordered due dates. The attached Cassia County Idaho Comprehensive Plan (2022) (Attachment A) and Power County Comprehensive Plan (2018) (Attachment B) are herein incorporated by reference.

The Draft RMPA/EIS does not meet the minimum NEPA standards. Instead, it fails to address local land use plans in a meaningful way because it covers too much land. The document fails to adequately take into account the significant adverse impacts to Cassia and Power Counties private landowners and the associated environmental justice and economic impacts.

This lack of specificity is a fatal flaw in the Draft RMPA/EIS due to significant adverse, irretrievable, irreversible impacts that were not analyzed in sufficient detail for BLM decision makers and the public to even begin to understand the far reaching, long term adverse impacts that will come from implementation of decisions proposed in the current NEPA analysis.

Cassia County zoning (Attachment C) includes:

> "*Title 9-7-3: AGRICULTURAL PRIME ZONE (AP): A. Purpose: The purpose of this zone or district is to retain the economic base of Cassia County by preserving the irrigated productive lands for agricultural purposes and by identifying and protecting the farmlands lying in those portions of the county not likely to undergo intensive urban development."*

Power County Zoning Code (Attachment D) includes Zones Limiting Transmission Systems. See Zoning Code 10-19A-6:

> "*A. As much as is reasonably possible, no utility transmission systems should be allowed in land zoned rural residential, commercial, light industrial, or agricultural.*

Utility transmission systems should be located in land zoned heavy industrial wherever possible.

B. Unless unreasonable, or absolutely necessary, no systems may be located on irrigated farmland. The planning and zoning commission should carefully consider alternatives to locating utility transmission structures on any type of working agricultural land, including CRP land, due to the potential adverse impact. Alternatives on public land or land not actively managed or used for agriculture should be preferred. The location of the utility transmission systems must be in compliance with the Power County comprehensive plan. (Ord. 2015-1, 3-9-2015)"

The Counties request that the current NEPA analysis address their zoning in general and their agricultural prime zone information in particular in relation to impacts to the economic base of the Counties and environmental justice factors. They request all impacts caused by the shunting of public projects including transmission lines and other energy corridors, roadways, etc. onto the private land in agricultural zoning be revealed, analyzed and avoided or fully mitigated, as required by existing laws and public policies.

Though the State of Idaho has done an excellent job of coordinating with Counties, BLM cannot rely on each State to adequately represent all County interests within their boundaries. The BLM needs to comply with NEPA by analyzing the adverse impacts to Cassia and Power Counties noted herein as well as other impacts BLM should know will occur to Counties and private landowners if decisions from the current analysis are implemented.

Page 1-13: "*Through this process, additional input will be obtained on how state and local plans may or may not be consistent with the alternatives. The resulting comments will be addressed in the Proposed RMPA/Final EIS. The Final EIS will also identify known inconsistencies the proposed plan amendments have with State or local plans, policies, or programs. The formal 60-day consistency review by the Governor will occur after the Proposed RMPA/Final EIS is published, as outlined in 43 CFR Subpart 1610.3-2(e) of the BLM planning regulations*."

Comment: Waiting until the Final EIS is published to see how BLM identified inconsistencies with Cassia and Power County plans, policies and programs is too late. Cassia and Power Counties issues, concerns and impacts were left out of BLM consideration since 2013. Why?

The BLM efforts to keep local governments informed is woefully lacking. Cassia and Power Counties request a seat at the table going forward.

The entire sage-grouse NEPA process has a fatal flaw in respect to local governments. While federal land issues get carried forward, local government issues and concerns are erased after each NEPA process and there are too many NEPA processes going on in

southern Idaho for local governments to continue to provide specific information to every federal agency each time they begin another sage-grouse related NEPA analysis.

Cassia and Power Counties request all prior relevant comments to BLM NEPA analyses herein be incorporated by reference. Those comments include but are not limited to all their comments regarding the BLM NEPA analysis of the Gateway West Transmission Project. Furthermore, we request the 2013 BLM EIS regarding this transmission line project be updated with a supplemental EIS to analyze the future construction in relation to what is now known about sage-grouse and their habitat.

Page 32 of the BLM Gateway West Transmission Line Record of Decision states that "*BLM was unable to select Alternative 7K (the preferred alternative of Cassia and Power Counties) because the majority of the public lands involved are currently classified as sage-grouse PPH and national policy precludes siting large infrastructure projects on these lands. Should the PPH classifications change before the Project begins construction (currently scheduled for 2018 or 2019), the BLM would reconsider alignments on public lands not classified as Priority Habitat*."

The current 2024 BLM Sage-Grouse Draft RMPA/EIS triggers a supplemental NEPA analysis for the Gateway West Transmission Line Project, to determine whether sage-grouse classifications changed and to address new data on route alternatives. The 2013 Gateway West NEPA analysis does not meet the current sage-grouse related NEPA analyses requirements regarding impacts to sage-grouse and their habitat, disturbance caps, mitigation and documentation of irreversible, irretrievable commitments of resources.

Chapter 2:

Disturbance Caps:

Comment: To conserve seasonable habitat for GRSG, the BLM proposes to apply disturbance caps to PHMA within the Habitat Assessment Framework (HAF) at both a fine scale and project scale. This is purported to protect GRSG from anthropogenic disturbances. An arbitrary disturbance cap is set at three percent in Idaho, while Wyoming and Montana have a five percent disturbance cap. These disturbance caps do not include habitat loss from wildfire – the largest threat to GRSG habitat. These arbitrary determinations conflict with the known seasonal habitat use of GRSG and will result in unnecessary restrictions for transmission line siting. A one-size-fits-all limit on disturbances to less than three or five percent fails to take into account the diverse landscapes that GRSG uses and is contrary to the goals of the plans.

The BLM correctly recognizes throughout the GRSG plans that a disturbance cap would restrict the development of infrastructure. As such, the BLM should eliminate the disturbance cap concept.

Instead of disturbance caps, BLM should focus on restoration of lands disturbed by wildfires to assure net conservation gains over time. This is a much more positive approach, in line with BLM's multiple use and sustained yield values, mission and mandates.

BLM should also recognize the important state and private mitigation strategies that conserve GRSG. Habitat metrics will improve as habitat restoration methodologies get better gain traction and implementation becomes a high priority. Habitat restoration will benefit GRSG without the undue economic harm resulting from disturbance caps.

Lek Buffers:

The Counties are concerned with the BLM's new definition of "active lek" that is adapted from the Western Association of Fish and Wildlife Agencies (WAFWA). This definition would double the length of time that an unused lek is considered active – effectively creating an arbitrary restriction on development that provides little to no analysis of the impact to the GRSG. The overly broad definition of what is considered an active lek would increase the amount of leks that are counted in the area to include pending active leks. The Counties respectfully disagree with any concurrence by the State of Idaho in expanded lek buffers to the extent that it would reduce flexibility in infrastructure siting.

The BLM would maintain lek buffers for all Habitat Management Areas (HMAs) in Alternative 1. But, in Alternatives 3, 4, 5, and 6, the BLM would extend lek buffer restrictions to all active and pending leks, effectively increasing management restrictions in areas that may not be suitable habitat for the GRSG. In general, the Counties disagree with the use of lek buffers as an arbitrary and overly broad rule that does not account for the dynamic habitat that GRSG use. The practical effect is a vast limitation on federal lands in order to "protect" the GRSG, while putting non-habitat and marginal habitat off limits to development.

The federal government has been spending tens of millions of dollars a year performing detailed research on sage-grouse leks since at least 2010. Biologists can map active leks and provide confirmation that other leks have been abandoned. U.S. Geological Survey (USGS) alone spends approximately $4.5 million on sage grouse research each year (USGS Budget Justification Documents).

Section 2.5.2:

Comment: Clarify that the allocations and criteria for major land uses in the RMPA/EIS supersede and replace previous plans and internal BLM policies with respect to management of GRSG habitat and authorization of major land uses. The 2013 FEIS for Gateway West referred to unspecified BLM policies with respect to GRSG as a basis for making routing decisions. It should be clarified that the RMPA/EIS will replace all such policies when it is finalized.

Table 2-10, Page 2-96 (Major ROWs).

Comment: Alternatives 5 and 6: Recognize that location of major ROWs in PHMA/IHMA may be necessary to meet other resource needs, including but not limited to the need for protection of prime agricultural lands, notwithstanding avoidance areas, if minimization or mitigation is an option.

Table 2-11, Page 2-100 (Predation).

Comment: Require predator management plans in Alternatives 5 and 6. For future development, reduce opportunities for raven and raptor perching and nesting through measures such as next/perch deterrents (and maintenance thereof),

Chapter 3: Affected Environment

Comment: The Counties request BLM add the following section about agricultural lands from https://agri.idaho.gov/about-idaho-agriculture/

These lands will be affected by BLM shunting public projects including energy infrastructure to private lands.

1. Agriculture is a major driver of Idaho's economy. In 2023, Idaho's agricultural sector contributed $11.2 billion to the state's economy and accounted for about 5% of the state's total GDP. Agriculture directly and indirectly supports about 1 in 8 jobs in Idaho.
2. National leadership in key commodities: Idaho is a national leader in the production of several agricultural commodities. The state is famous for its potatoes, producing about 30% of the nation's total potato crop. Idaho also ranks highly in the production of barley, alfalfa hay, sugar beets, peppermint, food trout, and other specialty crops. Cassia and Power Counties are vital to food security and are among the country's highest producers of wheat, beets and potatoes.
3. Food security: Idaho's diverse agricultural sector helps contribute to national food security. The state's farms and ranches produce a wide variety of food crops, dairy products, and livestock that feed people across the country and around the world.
4. Rural economic base: Agriculture serves as the economic backbone for many of Idaho's rural communities. Farming and ranching provide jobs, support local businesses, and generate tax revenue that helps sustain rural counties and towns across the state.
5. Stewardship of natural resources: Idaho's farmers and ranchers act as stewards for millions of acres of land across the state. Agricultural practices help maintain open spaces, manage watersheds, and provide habitat for wildlife. Sustainable

farming and ranching help preserve the state's soil, water, and other natural resources for future generations.

6. Cultural heritage: Agriculture has deep roots in Idaho's history and cultural identity. Many Idaho communities have agricultural traditions stretching back generations, and events like county fairs and rodeos celebrate this heritage. Farming and ranching are an integral part of the state's rural way of life.
7. Agribusiness and value-added processing: Idaho's agricultural sector supports a diverse range of agribusiness and value-added processing. Food processing, agricultural input suppliers, and other agribusinesses generate additional economic activity and jobs beyond the farm gate.

In summary, agriculture is a vital part of Idaho's economy, culture, and identity. The state's agricultural sector provides jobs, food security, natural resource stewardship, and a way of life for many Idahoans. Recognizing the importance of agriculture is key to understanding Idaho's past, present, and future.

Section 3.12.4 (Environmental Justice).

Comment: The RMPA/DEIS acknowledges that 25 of 27 Idaho counties affected by GRSG management meet the criteria as environmental justice communities. The DEIS incorrectly states that there is lack of evidence that individuals employed in sectors most likely to be affected by BLM management decisions, such as the farming and ranching sectors, have a higher percentage of people who identify as minority or low income. Based on this assertion, BLM has chosen not to carry forward economic impacts on environmental justice populations in the impacts analysis.

This ignores the critical fact that BLM decisions to close or sharply restrict renewable energy or large ROWs on BLM lands due to GRSG concerns pushes such development onto high value private irrigated agricultural lands, as demonstrated by the 2013 Gateway West FEIS/ROD. This induced impact will create significant impacts on the Counties' agricultural sectors in which significant numbers of environmental justice populations have primary employment, taking lands out of production and reducing employment, county tax revenue, and county ability to provide education and social services to environmental justice populations.

The Counties request BLM use US Census Data including the following statistics from the Hispanic Profile Data Book 2023_Final_20240222.pdf
https://icha.idaho.gov/docs/Hispanic%20Profile%20Data%20Book%202023_Final_20240222.pdf

Roughly 252,000 Hispanics live in Idaho. They made up 13% of the state's population in 2021, compared to 19% nationwide. Hispanics were heavily concentrated in the southern part of the state but live in all 44 counties. Southwestern Idaho had by far the most Hispanic residents: approximately 127,000 in 2021.

The Hispanic population in Idaho grew by 36% over the last decade, compared to 17% among non-Hispanics. …

A disproportionate share of Hispanics were employed in agriculture, an industry for which the Idaho Department of Labor reports detailed statistics. In 2021, the average monthly agricultural employment in Idaho was approximately 57,000, with peak monthly employment occurring in October when there were about 63,000 agricultural employees. In 2021, the employment of migrant and seasonal farmworkers in Idaho reached its peak of 12,304 in October, when they made up 28% of the state's hired agricultural workforce. …

Because Hispanics are more likely to work in lower-wage industries and occupations, they earn less than non-Hispanics on a full-time, annual basis. Median earnings for full-time, year-round workers in 2021 was $41,250 for Hispanic males in Idaho, $14,110 less than for non-Hispanic males. Earnings for Hispanic female workers were $31,741, $10,737 less than for non-Hispanic females. Median earnings of Hispanic males in Idaho increased by 17% from 2018 to 2021, while earnings increased by 24% among Hispanic females, 9% among non-Hispanic males, and 9% among non-Hispanic females. Median earnings for full-time workers in Idaho lagged behind earnings in the United States among both Hispanics and non-Hispanics. …

Two additional measures of economic well-being are per capita income (total income divided by total number of people) and the poverty rate (share of the population with income less than the federal poverty threshold). As in the rest of the United States, per capita income and median household income were both lower among Hispanics than among non-Hispanics in Idaho. Per capita income among Hispanics in Idaho was $21,154 in 2021, compared to $35,779 among non-Hispanics. When adjusted for inflation, Hispanic per capita income in 2021 was 52% higher than in 2010. Non-Hispanic per capita income in 2021 was 29% higher than in 2010. ….Median household income among Hispanics in Idaho was $59,663 in 2021, compared to $68,324 among non-Hispanics. When adjusted for inflation, Hispanic median household income reached a low of $34,100 in 2011, recovered to pre-recession levels by 2013, and by 2021 was 39% higher than in 2010. Non-Hispanic median household income in 2021 was 23% higher than in 2010.

As with other measures of economic well-being, Hispanics had higher poverty rates than non-Hispanics in Idaho and the United States. In 2021, the overall Hispanic poverty rate in Idaho was 12%, compared to 11% among non-Hispanics. Rates were even higher among the state's Hispanic children under age 18, with 14% living in poverty. Overall poverty rates in Idaho were slightly lower than the rest of the United States. Hispanic poverty rates vary considerably by family type, both nationally and in Idaho. The highest rate in Idaho was among single female-headed households with children under 5 years only. In Idaho, the rate for this group was 73% in 2021, much higher than in the United

States as a whole. At both the state and national levels, the lowest Hispanic poverty rates were among married-couple families (5% and 9%). ..

Since the recession, the gap between Hispanic and non-Hispanic poverty rates shrank until 2017. The overall Hispanic poverty rate in Idaho declined by 16 percentage points from 2010 to 2021, while the overall non-Hispanic rate fell by 3 percentage points.

In 2020, Hispanics accounted for 8% of Idaho's total buying power ($80.8 billion). This was an increase from 2010 when Hispanic buying power accounted for 6% of Idaho's total. Between 2010 and 2020, Hispanic buying power increased at a greater rate than among non-Hispanics: 121% compared to 72%, respectively. Despite this increase, per capita buying power among Hispanics in Idaho continued to be much lower: $28,766 among Hispanics compared to $48,557 among non-Hispanics.

Chapter 4: Environmental Consequences

Comment: Please add the following points throughout Chapter 4 of the NEPA analysis. The analysis should be expanded to include the following significant negative impacts on agricultural landowners and low income/minority workers in Idaho due to shifting public projects including energy infrastructure to private agricultural lands:

1) Land taken out of production: The footprint of transmission towers, substations, access roads and other infrastructure directly takes valuable farmland out of agricultural production permanently. A typical high voltage transmission line requires a 150-200-foot-wide right-of-way, which can add up to a significant acreage of lost farmland over the length of the line.
2) Fragmentation of farms: Transmission line corridors can bisect and fragment contiguous tracts of farmland, breaking them up into smaller, oddly shaped parcels that are less efficient to farm. This can disrupt the efficient movement of equipment, irrigation lines, and farming operations.
3) Safety hazards and liabilities: Transmission lines pose potential safety hazards for farmers working near them with drones, tall equipment such as forage choppers with 18-foot-tall chutes, combines, sprayers, and irrigation pipes. Farmers may have to restrict certain practices near lines. If a tower or line falls, it could damage crops and equipment and injure workers, cause wildfires and create liabilities for the farmer as well as the utility.
4) Reduced crop yields: Some research suggests that crops directly under high voltage power lines may have reduced yields due to electromagnetic field effects and limitations on irrigation, aerial spraying and drone-based data collection/spraying/harvesting options. Towers can also create areas that are difficult to plant and cultivate around.
5) Limitations on land use: Transmission lines place permanent limitations on land use underneath them. Farmers generally can't build structures, plant

trees, or install pivoting irrigation systems under transmission lines. This constrains the flexibility and options farmers have to utilize their land in the future.

6) Weeds and pests: The disturbed land along transmission corridors can harbor noxious weeds and other invasive species as well as insects and other pests, that spread into adjacent crop fields, requiring additional management by farmers to control.
7) Viewshed impacts and reduced property values: The visual impact of large transmission lines can negatively affect the rural character of an area and potentially lower property values of farms with lines running through them.

Page 4-5: "*Although transmission and power line construction does not generally result in substantial direct habitat loss, it would permanently disturb individual GRSG and habitat along the ROW due to the associated human activity, equipment, and noise, and would contribute to habitat fragmentation. In addition, transmission lines can provide perches and nest sites for ravens and raptors, resulting in indirect negative impacts on GRSG survival and reproduction*."

Comment: The same analysis that was done for GRSG is needed for agriculture. Transmission and powerline construction shifted off BLM managed lands onto private agricultural lands would permanently disturb farmers due to associated non-farm related human activity, equipment and noise; habitat fragmentation; perches and nest sites for birds that eat crops, resulting in direct and indirect negative impacts to Cassia and Power County agricultural landowners and the economy and food supply to local, State and federal governments.

Page 4-11: *"In CO, ID, NV/CA, OR, and UT, a 3% disturbance cap would apply to land use activities (except wildfire and agriculture) at both biologically significant unit (BSU)-scale and at proposed project analysis area within PHMA. In ID, the same cap would apply but it could be exceeded in utility corridors if it benefits GRSG."*

Comment: Cassia and Power Counties are concerned that up to 97% of BLM managed lands in certain portions of their respective Counties and the State of Idaho will no longer be managed for multiple use due to sage-grouse. The 3% disturbance cap is extremely low. The bird is not a listed species. Cassia and Power Counties recommend reducing all causes of mortality for the sage-grouse including but not limited to deaths due to hunting, scientific studies, wildfires, predators, etc., instead of disturbance caps within the Counties and State.

Page 4-14: "*The BLM would collocate new ROWs with existing infrastructure when possible."*

Comment: We recommend BLM collocate 100% of the proposed Gateway West Transmission Line Project and other energy infrastructure adjacent to existing State and

Federal highways, at least within Cassia and Power Counties or implement Alternative 7K analyzed in the Gateway West Transmission Line EIS.

We believe the high number of changes in GRSG habitat mapping and increased protection measures trigger re-assessment of the Gateway West Transmission Line project under current sage-grouse rules.

The Counties request the preferred alternative for the Gateway West Transmission Line be either the Cassia and Power Counties' alternative south of the proposed corridor or construction along existing roadways to avoid the significant adverse impacts to agricultural landowners along the current proposed corridor.

Page 4-23: "*All PHMA would be excluded from new ROW authorizations. New linear ROWs would be allowed only in designated ROW corridors."*

Comment: If all polygons of PHMA can be excluded from new ROW authorizations, all agricultural polygons can also be excluded. Food for human beings and animals is part of the chain of life. Agriculture should be elevated to at least as high a priority as sage-grouse habitat within the current analysis. All impacts to agriculture that would result from BLM land use decisions that shift land uses, including transmission line sitings, to private agricultural land need to address in detail in the current NEPA process.

Page 4-32: "*Micro-siting to avoid placement near leks or in connectivity corridors to avoid dividing breeding habitat from adjacent nesting or other seasonal habitats would reduce potential for alteration to high value and seasonal habitats and disturbance to GRSG during important life history stages (e.g., breeding, migration)."*

Comment: Micro-siting should also be done to avoid placement of ROWs on private agricultural land to avoid dividing crops and irrigation systems. This would reduce the potential for significant irreversible adverse impacts to local farmers and to local, regional and national food security and economic security.

Page 4-34: "*Managing ACECs as exclusion areas for major ROWs and avoidance areas for minor ROWs would reduce potential impacts to GRSG and habitat, such as disturbance, habitat alterations, and increased potential for predation, as described under Nature and Types of Effects."*

Comment: The same level of protection provided to ACECs should be provided to private agricultural land. Said farmland should be managed as exclusion areas for major ROWs and avoidance areas for minor ROWs. This would reduce the significant irreversible adverse impacts to agricultural landowners, food security and low income/migrant workers.

Page 4-34: "*Remaining vegetation could have reduced vigor or productivity due to mechanical damage, soil compaction, and dust. Soil compaction would inhibit natural revegetation in areas*

without active reclamation efforts and would reduce plant vigor, making plants more susceptible to disease, drought, or insect attack."

Comment: A parallel analysis needs to be done for agricultural.

Page 4-43: "*The BLM would apply a 3% cap for new and pre-existing authorizations for infrastructure, wildfire, and agriculture (subject to valid existing rights) at the project scale and within HAF fine scale habitat selection area while honoring valid existing rights."*

Comment: The term "valid existing rights" includes the US Constitutional right to own private property, through the Fifth and Fourteenth Amendments' Due Process Clauses and, more directly, through the Fifth Amendment's Takings Clause: "nor shall private property be taken for public use without just compensation."

The Draft RMPA/EIS is not clear on the impacts to "valid existing rights" for agricultural land or just compensation.

Decisions documented in the current NEPA process will result in the takings of private agricultural land. The takings will occur when transmission lines, other powerlines and roadways are shunted to private land and that land is either condemned or taken through regulations that take uses, leaving the title with the owner (regulatory takings).

The direct and indirect impacts to valid existing agricultural landowner rights due to shunting transmission lines to said agricultural land are impacts due to sage-grouse habitat management that need to be fully addressed in the next version of the RMPA/EIS. Included in the discussion, please address the fact that the compensation received by the landowners to date in the western US has normally been woefully inadequate.

Page 4-251: "*Planning and implementation decisions within planning areas that overlap the analysis area in this current effort could also affect future development. The BLM-management decisions in the federal resource management and land use plans throughout the planning area could contribute to cumulative impacts on the local and regional economies and the social conditions of local communities. These management decisions could lead to changes in employment, income, tax revenue, and economic output on top of the impacts discussed in Section 4.11, Social and Economic Conditions (Including Environmental Justice), as well as impacts on nonmarket and social conditions, as discussed below. The combined impact from these efforts could cause strain on the local economies, especially those that are reliant on industries that would be more likely impacted such as mining and agriculture industries as well as industries related to renewable energy development."*

Comment: This section of the Draft RMPA/EIS contains information that is the crux of the argument for a more detailed cumulative impact analysis within the current NEPA process, especially in relation to agriculture. All of the overlapping NEPA decisions within

Cassia and Power Counties and beyond create a level of planning complexity far beyond any past NEPA efforts in the western United States.

What is missing is a cumulative impact analysis that covers not only the federal lands but a detailed analysis of how these new and encompassing land use restrictions on BLM managed lands create new burdens on nearby private lands, especially important agricultural lands. The current NEPA document missed the broader agricultural industry beyond livestock grazing in its analysis.

Page 4-251-254:

"*Past, present, and reasonably foreseeable mineral leasing, exploration, and development will likely contribute to cumulative, impacts on employment opportunities and fiscal revenues in local and regional economies that have historically been reliant on mineral extraction. …"*

Past, present, and reasonably foreseeable nonenergy mineral leasing, exploration, and development will likely contribute to the impacts on local and regional economies. …

Past, present, and reasonably foreseeable locatable mineral extraction will likely contribute to the impacts on local and regional economies. …

Past, present, and reasonably foreseeable mineral materials extraction will likely contribute to the impacts on local and regional economies. …

Past, present, and reasonably foreseeable ROWs will likely contribute to the impacts on local and regional economies. …

These cumulative impacts on livestock grazing can affect costs incurred by ranchers and farmers, which would have cumulative impacts on the regional economies through changes in jobs, income, and economic output.

In many regions, such as in Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming …there could be cumulative impacts on the change in economic resilience and stability from BLM-management decisions that impact both grazing and mineral development, which are important sectors for these communities. …

Past, present, and reasonably foreseeable vegetation and wildfire fuels management that impact GRSG habitat will likely contribute to the impacts on communities through changes in access to nonmarket values. …

GRSG planning efforts could contribute to cumulative impacts by placing more constraints on mineral development…These could lead to disproportionate impacts on environmental justice communities, because environmental justice communities, such as low-income households, tend to live closer to mineral developments (Proville et al. 2022)…

Climate change could lead to impacts on many resources and could contribute to adverse and disproportionate impacts on environmental justice populations."

> **Comment:** Based on BLM's conclusions quoted above, which do not cover all local, regional and national impacts, the western USA could suffer a combination of significant irreversible adverse impacts at a scale that is unacceptable and completely impractical. Multiple use and sustained use cannot be accomplished under current alternatives, except possibly Alternative 5, if modified per our comments.
>
> If the federal government continues to prioritize sage-grouse habitat so far above private agricultural land, no amount of mitigation can compensate people for all of their cumulative losses. The decisions made in this NEPA process could jeopardize national defense, economic and food security.

Page 5.3: "*A cooperating agency is any such agency or tribe that enters into an agreement with the lead federal agency to "work with the BLM, sharing knowledge and resources, to achieve desired outcomes for public lands and communities within statutory and regulatory frameworks" (BLM Land Use Planning Handbook H-1601-1). These agencies are invited to participate because they have jurisdiction by law or can offer special expertise. Cooperating agency status provides a formal framework to engage in active collaboration with a lead federal agency in the planning process. Invitations were sent to potential cooperating agencies in December 2021 and January 2022 to the list of cooperating agencies provided in Table 5-1. The BLM invited many other cooperators to engage in this effort who either did not reply or chose not to participate."*

> **Comment:** Though it is late in the process, Cassia and Power Counties request cooperating and coordinating agency status to offer special expertise to the current NEPA process. Though the BLM may consider past direct or indirect information available to the Counties as sufficient notice of the opportunity to participate in the current NEPA process, County officials had no way of knowing the magnitude of significant adverse impacts including cumulative impacts that decisions from this current NEPA process would have on the Counties and their constituents. The Counties request a seat at the table going forward and comments herein immediately addressed by the BLM.

Jointly submitted by:

Cassia County Commissioners and Power County Commissioners

Attachment

June 12, 2024

Submitted via electronic form

Bureau Land Management
Attn: Quincy Bahr, Sage Grouse Project Manager
440 West 200 South
STE 500
Salt Lake City, UT 84104

Dear Project Manager Bahr:

Environment America is an environmental group with one mission: creating a greener, healthier planet. Saving America's wildlife and addressing the extinction crisis is a critical part of our mission.

We write in support of saving the greater sage-grouse, a truly remarkable bird. Unfortunately for this grouse, its habitat is rich in oil and gas, and is further threatened by mining, grazing and other activities. We urge you to choose the strongest possible protection as you amend greater sage-grouse goals, objectives and management plans. Of the options presented, Alternative 3 is the strongest and most protective option.

Please find the 7,531 public comments from our members and followers in support of saving the greater sage-grouse. Here is the specific language that our supporters signed:

> *Re: DOI-BLM-WO-2300-2022-0001-RMP-EIS*
>
> *The greater sage grouse is a remarkable species unlike any other. Its distinct sound, regal ruff and starburst tail set it apart. But this iconic species is losing its habitat. Since 1965, the greater sage grouse population has declined by 80%.*
>
> *The sagebrush plains are the only place where the greater sage grouse lives. Losing more habitat to drilling, mining or other human activity would threaten this bird and its wondrous mating display.*

More needs to be done to help the fragile greater sage grouse recover. And protecting greater sage grouse habitat will also help other wildlife on the sagebrush plains, including pygmy rabbits, golden eagles and endangered black-footed ferrets.

We, the undersigned, urge you to implement the strongest possible protections for the greater sage grouse population, including designating Areas of Critical Environmental Concern.

On behalf of Environment America, our state groups, and our many supporters and followers, we're pleased to submit these 7,531 comments. We look forward to your actions to save the greater sage grouse.

Sincerely,

Steve Blackledge
Senior Director, Conservation Campaigns

COLORADO
Parks and Wildlife
Department of Natural Resources

Director's Office
6060 Broadway
Denver, CO 80216
P 303.297.1192

June 13, 2024

Mr. Doug Vilsack
State Director
BLM Colorado
2850 Youngfield St.
Lakewood, CO 80215

Submitted electronically via BLM's Eplanning website

RE: BLM Greater Sage-Grouse Draft RMPA & EIS Public Review Period - Colorado Parks and Wildlife Comments

Dear Director Vilsack,

Colorado Parks and Wildlife (CPW) appreciates the opportunity to provide feedback on the BLM's Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement (GRSG RMPA). CPW's mission is *to perpetuate the wildlife resources of the state, to provide a quality state parks system, and to provide enjoyable and sustainable outdoor recreation opportunities that educate and inspire current and future generations to serve as active stewards of Colorado's natural resources*. This mission is implemented through our 2015 Strategic Plan[1] and the goals it embraces are designed to make CPW a national leader in wildlife management, conservation, and sustainable outdoor recreation for current and future generations. As you are aware, CPW has actively participated in this planning effort as a cooperating agency in order to provide data, technical expertise, and the State's perspective regarding implementation of the 2015 and 2019 greater sage-grouse RMP amendments.

The first rangewide BLM planning efforts specific to sage-grouse were initiated in part due to the U.S. Fish and Wildlife's determination that greater sage-grouse were warranted for listing under the Endangered Species Act. The Fish and Wildlife Service described a lack of adequate regulatory mechanisms to conserve sage-grouse as a primary factor supporting the listing of

[1] Colorado Parks and Wildlife 2015 Strategic Plan (November 2015) http://cpw.state.co.us/Documents/About/StrategicPlan/2015CPWStrategicPlan-11-19-15.pdf

Jeff Davis, Director, Colorado Parks and Wildlife
Parks and Wildlife Commission: Dallas May, Chair · Richard Reading, Vice-Chair · Karen Bailey, Secretary · Jessica Beaulieu
Marie Haskett · Jack Murphy · Gabriel Otero · Duke Phillips, IV · James Jay Tutchton · Eden Vardy

the species, particularly on public lands administered by the BLM. The purpose of this plan amendment process is to address inconsistencies in the 2015 and 2019 plans regarding new science and rapid changes affecting the BLM's management of public lands, including the effects of climate change.

Since the adoption of the first rangewide RMP amendment and Colorado-specific record of decision, the State has taken several measures to strengthen protections for GRSG within Colorado.[2] Specifically, following the passage of Senate Bill 19-181, the Energy and Carbon Management Commission (ECMC) has adopted new oil and gas permitting regulations that provide protections for greater sage-grouse habitats intended to be consistent with BLM's 2015 management plan.[3] CPW appreciates BLM's desire to review prior plans and identify opportunities to incorporate the best available science and address insufficiencies; however, we should be careful to not discard aspects of the original plans that worked well within Colorado.

Although Colorado only holds about 4% of the rangewide population, it is important for Colorado to maintain viable populations and a healthy sagebrush ecosystem to minimize the probability of range contraction. Population trends in our smaller, disjunct populations are currently below the long-term average for their population. This and lack of connectivity increases the risk of localized lek extirpation and thus eventual range contraction, which potentially increases the risk of a future listing under the Endangered Species Act.

CPW appreciates BLM's efforts to include a wide range of potential management actions within the various alternatives being proposed in the Draft RMPA. This includes measures that are specific to individual states to meet unique circumstances that occur across the range of the species (*Section 2.6*). We also understand that even though BLM has identified a proposed alternative within the draft, flexibility remains to mix and match specific pieces from other alternatives into the Final RMPA and proposed alternative. In general, CPW believes that earlier BLM planning efforts for Colorado created a robust framework for protecting sage-grouse while still allowing for multiple uses to occur on BLM-administered lands. We have a strong desire to maintain many of these previous achievements that were obtained through extensive stakeholder involvement and not lessen current conservation actions due to the range-wide nature of the current planning effort.

In addition to the general comments above, Colorado Parks & Wildlife has conducted a review of the Draft RMPA/EIS and would like to provide the following detailed comments and recommendations relevant to specific sections of the draft.

---

[2] Colorado Executive Order D 2015-004 - Conserving Greater Sage-Grouse Habitat
Colorado State Land Board's 2020 Greater Sage-Grouse Stewardship Action Plan
CPW Recommendations to Avoid and Minimize Impacts to Wildlife from Land Use Development

[3] Energy and Carbon Management Commission 300 and 1200 Series Regulations

Fluid Mineral Leasing Stipulations and Waivers, Exceptions & Modifications (WEMs)

Fluid mineral development in Northwest Colorado has a long and cyclic history, and the effects of oil and gas development on sage-grouse may be one of the most researched topics for this species. With new data and information always emerging, it is important to maintain an adaptive management approach that responsibly manages the development of BLM's fluid mineral resources while protecting sage-grouse habitats. Additionally, with the recent adoption of Colorado's SB-181 oil and gas regulations, consistency between the State and Federal regulatory processes is critical to avoid confusion and regulatory uncertainties. Along these lines, CPW supports several of the proposed changes within the preferred alternative of the draft. Clarifying the lek activity and status designations for Colorado will add consistency between the rangewide WAFWA definition of active leks and align with CPW's high priority habitat (HPH) layers that are utilized by ECMC during their oil and gas permitting process. We recommend that BLM continue to utilize the most current lek site data, as mapped by CPW, for their lease stipulation application process and other management actions contained within the plan. We also support the commitment from BLM to update their management zone numbering system to match the State's nomenclature and reduce confusion.

CPW recommends the following to be included in the Final RMPA/EIS and proposed alternative:

- MD MR-1: **For Alternative 5 (*preferred alternative*), please reinstate the strict No Surface Occupancy (NSO) stipulation for all designated habitats within one mile of an occupied lek in Colorado.** CPW understands the desire to streamline this stipulation by combining it with the overall NSO requirement for Priority Habitat Management Areas (PHMA), but this will create areas where development may be allowed in close proximity to lekking areas. Colorado's habitat mapping is detailed and intricate with many patches of general habitat (GHMA) occurring within PHMA, and within one mile of occupied lek sites. If the NSO stipulation only applies to the PHMA layer, CPW is concerned that new development could be allowed within GHMA close to occupied lek sites (*see Attachment 1*). ECMC's 1200 Series regulations provide NSO protections to all areas within one mile of the lek site regardless of habitat mapping designations. Variances and exceptions should be considered in instances of extreme topographic relief (e.g., Roan Plateau) or when other criteria are met, as described in the exception criteria language for PHMA within one mile of occupied leks.

- CPW maintains concern regarding the walking back of protections from the 2015 and 2019 plans which both contain a two-mile NSO stipulation for GHMA (MD MR-4) instead of the less restrictive Controlled Surface Use (CSU) stipulation. We understand BLM's desire to reduce lek-based allocation decisions and rely more on the mapped habitat layers, but we continue to stress the need for a one-mile NSO stipulation as stated above. With the addition of MR-1 into the preferred alternative, CPW supports the addition of a CSU stipulation for GHMA as detailed in Alternative 6.

This stipulation requiring additional avoidance and minimization measures within one mile of mapped PHMA would be more consistent with the State's permitting requirements for GHMA and gives BLM staff the tools needed to better address adverse impacts within GHMA habitats.

- Leased Fluid Minerals (MR MD-8) - CPW understands that the BLM cannot apply measures that would render the development of a valid existing lease infeasible. However, the language of MD-8 is unclear regarding who decides if the proposed development meets one of the siting criteria provided. Additionally, if at least one of the siting criteria are not met and the project is allowed to proceed based on the use of compensatory mitigation, it is not clearly defined how BLM will coordinate with the State on assessing and applying the mitigation. We recommend providing more details on implementation of this measure and incorporating language from Exception #1 that states, "If the State agency does not concur with granting the exception, the Authorized Officer must provide rationale for how the criteria are met considering the information the State provides".

- Lastly, in instances where compensatory mitigation is required or considered when reviewing stipulation waiver, exception, or modification requests, CPW recommends maintaining flexibility by allowing the mitigation action to be completed after the approval has been granted. Requiring mitigation to be completed before granting an NSO exception may be appropriate; however, with less restrictive stipulations such as timing limitations, flexibility may be warranted to avoid extensive delays. This approach will also allow utilization of the State's fee-based oil and gas compensatory mitigation program as an accepted method of mitigating impacts. CPW has witnessed this option become more popular with oil and gas operators instead of completing their own mitigation projects. This would allow for a more streamlined system to administer mitigation during the exception review process and avoid delays that would be associated with an operator completing their own mitigation prior to a BLM decision being made.

Renewable Energy Development & ROW Approvals

We support the development of renewable energy through a thoughtful and responsible approach that allows CPW to continue implementing its mission of perpetuating the wildlife resources of the state. Colorado Parks and Wildlife is committed to protecting wildlife resources while facilitating renewable energy development faster, more efficiently, and at scale.

Colorado Parks and Wildlife looks forward to future engagement with the BLM to discuss the approach and implementation of the PHMA "avoidance with caveats" and GHMA "open with minimization measures and compensatory mitigation" criteria that is defined in the BLM's preferred alternative. With continued engagement and collaboration between the BLM, State,

and local governments, it is possible to meet renewable energy transition goals and also address potential impacts for the benefit of the greater sage-grouse.

Adaptive Management and Targeted Annual Warning System (TAWS)

Colorado Parks and Wildlife appreciates BLM's recognition of the state's responsibility for monitoring populations and identifying population areas of concern. We believe the population monitoring framework and TAWS provide a consistent rangewide framework. Thus, Colorado supports the proposed use of the Targeted Annual Warning System as part of BLM's adaptive management threshold system. The original hard and soft thresholds in Alternatives 1 and 2 were not consistent across the range and did not function as intended in Colorado. The original soft threshold did not include any specific criteria to trigger a management action. The hard trigger threshold was designed as a catastrophic backstop which in reality would virtually never be met. The proposed TAWS framework has been developed by USGS as a rangewide tool and included collaboration with all of the state wildlife agencies. The proposed language that allows the state wildlife agencies to collaborate with the BLM and verify potential triggers in population assessments is critical. Strengthening the language that "encourages" an annual review of habitat and population information between the BLM and associated state wildlife agencies to instead be required would facilitate forewarning of a potential trigger occurring. This could be a Colorado-specific action. Since the 2015 plan, CPW and BLM have met annually as part of the implementation plan. This facilitated communication and implementation of the plan and provided guidance to BLM in their 5-year planning process. Continuing these meetings would be instrumental in discussions on any potential adaptive management trigger and subsequent action.

Compensatory Mitigation Strategy

Since completion of the 2015 GRSG RMPA and Colorado ROD, CPW has worked with the BLM to assess and implement compensatory mitigation for greater sage-grouse in Colorado. Recently mitigation resources from the Gateway South transmission line project have been allocated to conserve high value sage-grouse habitats in perpetuity. We value this partnership and would like to take additional steps to improve on our existing mitigation framework. Specifically, CPW recommends that BLM continue working with the State during implementation of this plan to establish a mitigation program/system tailored to Colorado's needs. The draft RMPA/EIS seems to rely heavily on state-administered compensatory mitigation programs, which may be more appropriate in other states that have established these programs for all disturbance types within grouse habitats. In Colorado, the only state-run mitigation program is specific to oil and gas disturbance and is run by ECMC and CPW. For other disturbance types (e.g., renewable energy projects, mining, roads, communication towers, transmission lines, etc.), the State does not have any compensatory mitigation requirements or programs established. Creating consistent methods for assessing impacts, determining acceptable mitigation projects, ways to account for uncertainty, and desired timelines for mitigation would be extremely valuable and provide regulatory certainty for users of BLM-administered

lands in Colorado. Additionally, formalizing these aspects of compensatory mitigation would create efficiencies for CPW and BLM staff and reduce the need to conduct one-off mitigation agreements for each individual project. We realize this will not be completed before signing of the record of decision, but we look forward to working with BLM to achieve this mutually beneficial goal.

We also recommend that BLM continue to coordinate with the State and Department of Natural Resources to update their memorandum of understanding to include agreements that BLM can accept oil and gas mitigation obtained through the ECMC and CPW compensatory mitigation program to satisfy federal mitigation requirements. These comments were provided to BLM for the Colorado Big Game RMP Amendment and are important to maintain a consistent approach for industry when permitting new oil and gas locations in high priority habitats on public lands.

Grazing Management

Grazing management is an important component of BLM's multiple use mandate that overlaps significantly with sage-grouse habitat. CPW recommends that BLM incorporate the prioritization framework from the Gunnison Sage-grouse RMPA for grazing allotment reauthorizations in greater sage-grouse habitats. Additionally, RM-2 and RM-3 indicate that when the Land Health Standard for Special Status Species habitat is not being met and existing livestock grazing is a significant causal factor, adjustments to grazing practices should occur. This implies a causal factor analysis has already been completed but there is no indication of what would have previously triggered a causal factor analysis to be conducted. Please clarify how and when a causal factor analysis would be triggered. CPW looks forward to working closely with BLM field offices during the allotment reauthorization process.

Areas of Critical Environmental Concern (ACEC)

As part of this planning process, BLM is considering the designation of new Areas of Critical Environmental Concern or ACECs. These areas have been included and analyzed within Alternative 6 of the draft RMPA. The only proposed ACEC in Colorado is the Case Flats ACEC in the North Park sage-grouse population. CPW biologists have documented extensive winter and pre-lekking seasonal use of this area by sage-grouse using GPS and VHF tracking technologies. Although this proposed ACEC meets the relevance and importance criteria, CPW believes it does not need special management prescriptions above the measures and allocations included in the plan itself. The designated area is composed primarily of PHMA habitat which will provide sufficient protections from the most likely land use impacts to occur in this area of the state.

Wild Horse and Burro Management

Colorado supports the continued approach of managing wild horses within AML, using fertility control to achieve herd population objectives, and potential revision of AMLs through a

separate NEPA process if sage-grouse habitat objectives are not being met. The Colorado Wild Horse Working Group provides a forum for BLM, the State, and wild horse interested parties to work together to consider the needs of wild horses as well as the biological requirements of wildlife, including greater sage-grouse. We are confident that efforts by this group can help build consensus to support effective and humane population management of wild horses in the state.

Colorado Parks and Wildlife appreciates this opportunity to provide comments and looks forward to continued collaboration with the BLM and other stakeholders to further conservation of the greater sage-grouse in Colorado and throughout the multi-state region. If you have any questions regarding these comments or additional information is needed, please contact Kathy Griffin, Grouse Conservation Program Manager, at kathy.griffin@state.co.us or Taylor Elm, NW Region Energy Liaison, at taylor.elm@state.co.us.

Sincerely,

Jeff Davis,

Director, Colorado Parks & Wildlife

CC: Alan Bittner, Deputy State Director (BLM)
Diane Mastin Dixon, Sage-grouse Project Manager (BLM)
Tim Mauck, Deputy Director (DNR)
Reid DeWalt, Assistant Director (CPW)
Brian Dreher, Terrestrial Section Manager (CPW)
Travis Black, NW Region Manager (CPW)
Kathy Griffin, Grouse Conservation Program Manager (CPW)

Attachment 1: Lease Stipulation Example Maps

Attachment 1: Lease Stipulation Example Maps

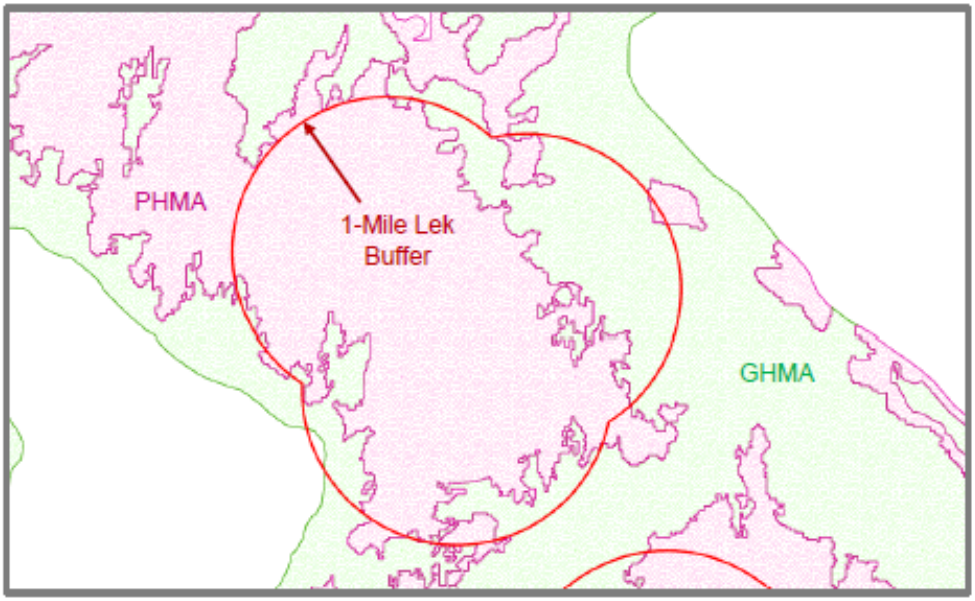


Figure 1: This image demonstrates the refined PHMA mapping that has been done for Colorado and the amount of GHMA that can occur within one-mile from an occupied lek site. In this instance, new oil and gas development under the preferred alternative could be allowed well within one mile of a lek site and would be inconsistent with State regulations.

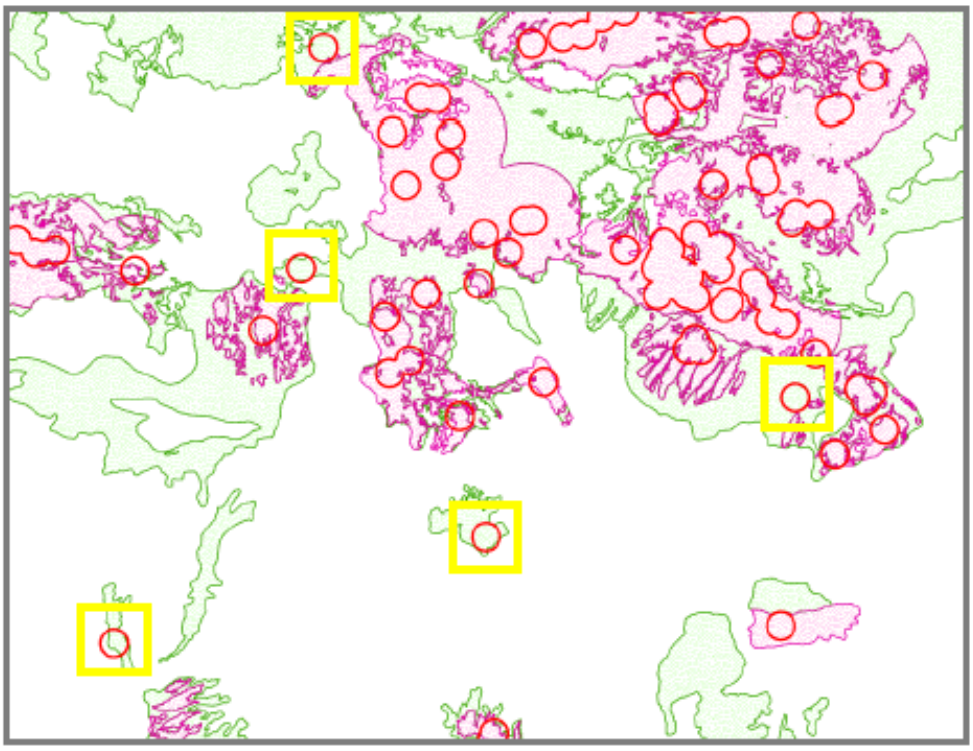


Figure 2: Colorado also has several occupied leks that are located entirely within GHMA habitat (see yellow squares). These lek sites would no longer receive NSO protections under the preferred alternative, highlighting the need for inclusion of MD MR-1 NSO stipulation in the proposed alternative for Colorado.

June 13, 2024

To: DEPARTMENT OF THE INTERIOR Bureau of Land Management
Patricia Deibert, National Sage-grouse Coordinator (acting)
BLM_HQ_GRSG_Planning@blm.gov
440W 200S, Suite 500
Salt Lake City, UT 84101
307-757-3709

RE: DOI-BLM-WO-2300-2022-0001-RMP-EIS
Draft EIS to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation

Submitted by: Wild Horse Education, the organization, board, and members

Prepared by: Laura Leigh (Wild Horse Education founder and president) and Tammi Adams (Wild Horse Education NEPA Program Coordinator, member, and volunteer)

Good Day,

We submit the following substantive comment, proposed alternative, and present information, with reasonable basis, relevant to the wild horses and burros requiring analysis and response prior to any Decision, FONSI, and finalization of this Draft EIS.

Without herd management area plans (HMAPs) for the wild horse and burro herd management areas (HMAs) and herd areas (HAs), there is no way to infer nor mitigate impacts to the federally protected wild horses and burros from the changes considered and proposed in this Greater Sage Grouse (GrSG) Conservation LUPA/RMPA EIS.

We provided this same comment/concern for the Scoping EIS on January 16, 2022 via the BLM's eplanning site **and** by email (blm_hq_grsg_planning@blm.gov). Yet, again, our comments were ignored and not discussed in the Draft EIS.

The BLM states, "… **the scoping process ensures all opinions and comments are collected and considered in the environmental analysis**. Scoping helps ensure that problems are identified early and properly studied, that issues of no concern do not consume time and effort, and that the proposed action and alternatives are balanced and thorough." A scoping is intended to aid the BLM in clarifying issues, concerns, and opportunities; determining the appropriate scope of the environmental analysis; and gathering input as a result of public and agency comments received during the scoping period.

The BLM acknowledges that their current plans (2015 & 2019 Sage-Grouse Plan Amendments) for the GrSG and sagebrush habitat are inconsistent with "new science and the rapid changes affecting" public land management. Our provided and ignored Scoping EIS comments/concerns observed just that, BLM's refusal to provide *range wide management actions consistent with "new science and the rapid changes affecting" for wild horses and burros.* Indeed, without an HMAP for each HMA or complex of HMAs **there is no way to infer nor mitigate impacts to the federally protected wild horses and burros**.

General Comments:

Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and **to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands.** (Pub. L. 92–195, § 1, Dec. 15, 1971, 85 Stat. 649.) [Emphasis added.]

The Herd Management Area Plan is further defined in the *BLM Handbook -H-4700-1 Wild Horses and Burros Management Handbook (Public),* p.10, stating habitat, foaling season, population management, and monitoring objectives shall be appropriately defined in a Herd Management Area Plan (HMAP) rather than a Land Use Plan (LUP)/RMP.

§1332(c) "range" means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and **which is devoted principally but not necessarily exclusively to their welfare** in keeping with the multiple-use management concept for the public lands. [Emphasis added.]

Cumulative impacts and mitigation strategies require completion of a comprehensive analysis to protect wild horses' and burros' (**public resources**) habitat, resources, and health and well-being, and address mitigation for habitat and resource losses/impacts from past, present, and projected encroachment by discretionary permitted multiple uses. (*See* 40 CFR 1508.7.) [Emphasis added.]

BLM WHB Handbook (H-4700-1):

> 2.4.1 Habitat and Population Management
>
> **Habitat or population management and monitoring objectives regarding the management of a specific HMA or complex of HMAs are normally identified in a Herd Management Area Plan (HMAP) rather than a LUP**. [Emphasis added.]
>
> 2.5.2 Herd Management Area Plans
>
> **Herd Management Area Plans (HMAPs) are prepared under 43 CFR 4710.3-1**.
>
> HMAPs tier to and must be in conformance with the applicable LUP. If the proposed management strategy is not consistent with the LUP, then the LUP should be amended, or the proposal should be modified or rejected. [Emphasis added.]

BLM states, "For all management associated with other non-GRSG resources and values in these areas, **any authorized activities would need to be consistent with protection of those resources and values**. This RMPA effort would only alter the existing management associated with GRSG habitat. **All other existing management that is already designed to protect/manage the non-GRSG resources and values. Because of existing management, there would be no substantial impacts to the non-GRSG resources and values in these areas from the changes considered in this amendment**." [Emphasis added.] (See pg. 1-11.)

This is simply an anecdotal and misleading statement by BLM. **Because BLM has no existing management plans to protect/manage wild horses and burros, there would be no way to evaluate nor mitigate substantial impacts from the changes considered in this amendment to the public resources - wild horses and burros and their range.**

Under 43 CFR 4700.0-6(b), WH&B shall be considered comparably with other resource values in the formulation of LUPs. This means WH&B are to be considered in the same manner as other resource values (e.g., cultural, historic, scenic, rangelands, timber, and minerals). **WH&B are a resource value**, **as opposed to a land use (e.g., livestock grazing or timber harvest**). [Emphasis added.]

The BLM has not completed the required wild horse and burro herd management area plans (HMAPs) for over 160 WHB HMAs despite the CFR law and agency policies requiring the agency to do so (almost 40 years ago), including specific Congressional appropriations for HMAP development since 2020.

An accurate assessment of impacts to wild horses and burros within GrSG and sagebrush habitat is impossible to do without up-to-date, site-specific science based Herd Management Area Plans (HMAPs) for each Herd Management Area (HMA) that includes or overlaps primary and important critical habitat for the GrSG. Under the Wild Free-Roaming Horse and Burro Act of 1971 (WFRH&B) and the Federal Land Policy and Management Act of 1976 (FLPMA), 221 HMAs were identified. Of the 331 originally identified WHB HMAs, only 168 remain. Of the 168 remaining HMAs, there are possibly ten with HMAPs; and of those 10 or so HMAPs, none have been modernized with "new science" nor restructured for climate change (new information) as mandated by law and Executive Orders. HMAPs are essential to identify if wild horse and burro populations are aptly managed under NEPA mandates.

The BLM is not only inconsistent in their land management planning for the GrSG and sagebrush habitat, the fact that few, if any, site-specific science based studies are current and/or completed for management of wild horses and burros and the rangeland they call home. This lack of site-specific wild horse and burro management and monitor planning is extraordinarily concerning and requires addressing and completion for an adequately constructed and meaningful GrSG RMPA/LUPA EIS.

BLM Policy H-4700-1, §2.4.1 ***Habitat and Population Management*** Habitat or population management and monitoring objectives regarding the management of a specific HMA or complex of HMAs are normally identified in a Herd Management Area Plan (HMAP) rather than a LUP.

Wild horses and burros are the only free-roaming grazing species managed behind artificial-human devised boundary lines. Wild horses and burros are unable to move away from "multiple use" cumulative impacts to their designated habitat and range and any movement outside of those invisible boundaries instigates unsubstantiated Agency removal.

In fact, the agency continues to allow GrSG to be hunted, despite their declining populations and habitats, and despite the purpose for this RMPA/LUPA EIS.

43 CFR §4700 – WILD FREE-ROAMING HORSES AND BURROS MANAGEMENT (BLM Manual Rel. 4-111 Supersedes Rel. 4-89 2 07/07/2010 .01), it unambiguously states under 4700.02 that objectives of the BLM are:

> B. To consider wild horses and burros in the areas where they were found in 1971 (Herd Areas or HAs) as an integral part of the national system of public lands.
>
> D. To ensure management activities are carried out at the minimum feasible level necessary to attain the objectives identified in approved land use plans (LUPs) and Herd Management Area Plans (HMAPs) and that free-roaming behavior is maintained.

Consequently, it is necessary for the BLM to consider the proposed changes and manage wild horses and burros as a public resource and an integral part of public lands in the proposed Draft GrSG RMPA/LUPA EIS.

Indeed, HMAPs must be developed for each impacted wild horse and/or burro HMA, including the analyses of repatriation of HAs to HMAs, before "capture, branding, harassment, or death" of wild horses and burros under the presumed assumption that they negatively influence the GrSG and sagebrush habitat.

Without HMAPs, merely providing eight anecdotal and misleading paragraphs in a 1,660+-page document is inadequate to identify the extensive cumulative impacts to wild horses and burros.

BLM's preferred alternative in this Draft EIS RMPA/LUPA indicates random and/or annual WHB removals to low AMLs (administratively set for convenience), removal of herd management areas to herd areas (zero-out wild horses and burros), unmitigated loss of forage and water resources, unmitigated loss

of habitat and rangeland, extensive and ongoing cumulative impacts **from the changes considered in this amendment** and from other multiple uses, etc., for the next 20-years.

Noteworthy, is the BLM's preferred alternative allows livestock grazing to continue theoretically unhindered based on **the changes considered in this amendment.** Livestock grazing on public rangeland is not a right, it is a privilege, and ALL livestock grazing impacts GrSG and WHB forage, habitat, and water resources.

43 CFR §4710.5 Closure to livestock grazing.

> **(a)** If necessary to provide habitat for wild horses or burros, to implement herd management actions, or to protect wild horses or burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.

In addition, we respectfully request that BLM add this statement to the EIS as well.

> *In order to provide and protect GrSG priority habitat management areas (PHaMAs), to implement **the changes considered in this amendment,** to protect GrSG from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.*

When completing scientific studies for any EIS, it is imperative to identify cumulative impacts to affected fauna and ecosystems within the identified public land/range where management changes are proposed or considered.

At present, BLM has not provided nor completed any environmental assessment (EA) nor EIS **differentiating livestock grazing impacts from wild horse and burro (WHB) grazing impacts**. Hence, this EIS should provide differentiation of livestock and WHB grazing impacts to the GrSG and sagebrush habitat that is consistent with *new science and new information* as required under the National Environmental Policy Act (NEPA) of 1969 prior to any Decision, FONSI, and Final EIS.

In fact, severe impacts from water sources within 2 miles are associated with domestic livestock, **not wild horses and/or burros**. Universities from all over the country have published studies on "distance to water" and grazing patterns of cattle. Every single one note a 2-mile travel distance for domestic cattle and impact studies. Each one recommends distributing water and closer than 2 miles on flat land and 1 mile on hills to distribute domestic cattle. (University of Hawaii, University of Vermont, University of Ohio, University of Missouri, etc.)

BLM has never collected data to distinguish cattle use from wild horses and/or burros and has repeatedly attributed cattle impact to wild horses and burros. PEER published a report that demonstrates that the agency assesses and contributes wild horse and burro impacts far greater than livestock, noting, "If the agency used the same approach for calculating the area of influence of livestock within BLM grazing allotments on sage grouse habitat as it did for wild horses and burros, the area of influence for livestock would be roughly 14 times that given in the report and more than six times that of wild horses and burros." (PEER, 2014)

Federal laws and agency policies require that HMAPs evaluate and assess distinctions in rangeland utilization, trends, and multiple use impacts, and provide plans for monitoring rangeland health. Without delineating this grazing distinction (livestock impacts vs WHB impacts), **43 CFR §4710.5 Closure to livestock grazing** should be considered as **WH&Bs are a resource value**, **as opposed to a land use (e.g., livestock grazing)**.

Indeed, livestock can be moved/removed as livestock grazing on public lands is privilege not a right. While wild horse and burro free-roaming movement required to find food, shelter, and water resources is

impeded by imaginary HMA/HA boundary lines, livestock fencing, ROW corridors, green energy, extraction industries, etc.

In addition, this EIS should include the study and analysis of impacts to fire fuels from wild horse and burro grazing, just as BLM provided anecdotal statements of fire fuel impact from livestock grazing. The EIS analysis should include the benefits of wild horses and burros on cheat grass and other fire fuels in comparison with domestic livestock and wildlife species. BLM cannot simply state, "domestic livestock are used for fire-fuel reduction" as a "best and fair use" without provision of research, data, and analyses. Current databased research indicates far less invasive weeds (fire fuels) where wild horses and burros are present and livestock is absent.

Such aggressive and unsound Agency actions on wild horses and burros **from the changes considered in this amendment** mandate that our federally protected wild horses and burros have site-specific HMAPs crafted. The BLM changes proposed in this amendment direct the indiscriminant removal of wild horses and burros based on *administratively set for administrative convenience appropriate management levels* (AMLs – not TNEB). "**Justifying a removal based on nothing more than the *established* AML is not acceptable**." (BLM WH&B Handbook, H-4700-1, pg. 47 §7.1.2).

The BLM has never transparently provided adequate data, methods, and evaluation processes identifying the establishment of site-specific wild horse and/or burro AMLs for herd management areas.

The Wild Horses and Burros Management Handbook was written in response to a critique by the Government Accountability Office (GAO) stating that, as of 2008, BLM had not provided formal guidance to its field offices on how AMLs should be established and that there was a lack of consistency in setting AMLs in the agency (GAO, 2008). (*National Academies of Sciences, Engineering, and Medicine; 2013; Sec 7, p 197)*.

Previous reviews of BLM's setting of AMLs consistently reported that established AMLs were not based on thorough assessments of range conditions. The U.S. District Court for the District of Nevada, IBLA, and GAO all noted that AMLs of many HMAs in the 1970s and some in the 1980s were based on administrative decisions rather than information about the carrying capacity of the range (Dahl v. Clark, 1984; 109 IBLA 119; GAO, 1990). National Academies of Sciences, Engineering, and Medicine. 2013 (Sec 7, p 197)

BLM Policy H-4700-1, §4.2.2 ***Establishing or Adjusting AML*** An interdisciplinary and site-specific environmental analysis and decision process (NEPA) with public involvement is required to establish or adjust AML.

BLM Policy H-4700-1, §4.2.2.1 ***Establishing AML*** When establishing AML, the analysis shall include an in-depth evaluation of intensive monitoring data or land health assessment. Intensive monitoring data shall include studies of grazing utilization, range ecological condition and trend, actual use, and climate (weather) data. Population inventory, use patterns, and animal distribution should also be considered. A minimum of three to five years of data is preferred. Progress toward attainment of other site-specific and landscape-level management objectives should also be considered.

The HMAP is an appropriate and authorized process for setting a data-based, site-specific AMLs and AML adjustments. The AML may be adjusted (either up or down) through the site-specific environmental analysis that generates data (past and present) and supports a decision process as required under the National Environmental Policy Act of 1970 (NEPA) (P.L. 91-190).

In addition to completion of HMAPs and establishment of AMLs for each wild horse and/or burro herd management area impacted by **the changes considered in this amendment**, we respectfully request that

BLM provide the following interim wild horse and burro management action statements in the Greater Sage Grouse management plan Final RMPA/LUPA EIS preferred alternative and Decision of Record:

> "The Bureau of Land Management manages and protects wild horses and burros on 26.9 million acres of public lands across 10 Western states as part of its mission to administer public lands for a variety of uses. The Wild Horse and Burro Program's goal is to manage healthy wild horses and burros on healthy public rangelands." (*See* www.blm.gov.)
>
> The federally protected wild horses and burros are to be managed as a public resource on public lands designated principally, but not exclusively, for their habitat and wellbeing with protections as provided for in the Wild Free Roaming Horses and Burros Act of 1971 (WFRHBA) as amended, federal laws (43 CFR §4700, 40 CFR §1508, etc.), and agency policies (H-4700-1, H-1601-1, H-4180-1, etc.).
>
> Each wild horse and/or burro herd management area, or complex of herd management areas, is to be managed under an up-to-date, site-specific, databased herd management area plan (HMAP). The WHB HMAP is established with public input under the NEPA Process, federal law, and agency policy. Unfortunately, the DOI BLM has yet to complete the site-specific herd management area plans for the wild horse and burro herd management areas that GrSG PHaMAs overlap.
>
> The appropriate management levels (AMLs) for wild horse and burro herd management areas are to be adequately established/verified under the NEPA process within the creation of herd management area plans. The BLM cannot infer, evaluate, nor mitigate impacts to wild horses and burros from **the changes considered in this amendment** EIS, and the wild horse and burro management actions proposed in the EIS are capricious and unsubstantiated.
>
> The Agency's evaluation of cumulative impacts to wild horses and burros **from the changes considered in this amendment** would be merely anecdotal and misleading without site-specific herd management area plans and AMLs. This is significant because the **changes considered in this amendment** propose the removal of wild horses and burros based on AMLs not supported by new science nor site-specific evaluations adequately provided under the NEPA process within herd management area plans.
>
> Therefore, as the BLM creates the federally mandated site-specific wild horse and burro herd management area plans, they shall begin the NEPA process starting with GrSG PHaMAs, which overlap wild horse and/or burro herd management areas. Wild horse and burro herd management area plans shall support the following **changes as considered in this amendment**:
>
> - The GrSG priority habitat management areas (PHaMAs) and wild horse and burro (WHB) herd management areas (HMAs) and herd areas (HAs) shall be managed as priority public resource areas.
> - The BLM shall close GRSG PHaMAs and WHB HMAs & HAs to new fluid mineral leasing, saleable minerals/mineral materials permits, and non-energy leasable minerals leasing (development associated with existing permits and leases would not be precluded).
> - GrSG PHaMAs and WHB HMAs & HAs shall be recommended for withdrawal from location and entry under the Mining Law of 1872 and unavailable for livestock grazing.
> - GrSG PHaMAs and WHB HMAs & HAs shall be ROW exclusion areas.
> - WHB HMAs and HAs not overlapping GrSG PHaMAs shall have the same allocations (i.e., allowable uses) as GrSG PHaMAs overlapping WHB HMAs & HAs (previously identified).

- Provide the greatest level of restrictions on resource uses in all GRSG PHaMAs and WHB HMAs & HAs.

Creating an HMAP is in full compliance with all existing regulations and land use planning.

The function of an HMAP is to both "comply and inform" decision-making.

"**NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken**." 40 C.F.R. § 1500.1(b) [Emphasis added.]

Without herd management area plans (HMAPs) for the wild horse and burro herd management areas (HMAs) and herd areas (HAs), there is no way to infer nor mitigate impacts to the federally protected wild horses and burros from the changes considered and proposed in this Greater Sage Grouse (GrSG) Conservation LUPA/RMPA EIS.

By preponderance of the evidence provided, the BLM has violated NEPA by failure to consider cumulative impacts to wild horses and burros **from the changes considered in this amendment** and have erred in their assessment.

Lest you forget, since 1971:
Public Law 92-195: *"Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands."*

We appreciate the opportunity to provide our comments and concerns for the Draft EIS to Amend Land Use Plans Regarding Greater Sage-Grouse Conservation (DOI-BLM-WO-2300-2022-0001-RMP-EIS).

We look forward to a direct written response from BLM regarding these comments and concerns.

Best Regards,

Laura Leigh, Founder and President, Wild Horse Education
216 Lemmon Drive, #316
Reno, NV 89506
laura@wildhorseeducation.org
As a private citizen and as an authorized representation of Wild Horse Education, their individual board members, and members worldwide.

Tammi Adams, Wild Horse Education, NEPA Program Coordinator
21991 150th Street NW
Elk River, Minnesota 55330
tmadams7263@yahoo.com
As a private citizen, WHE member and volunteer, and as an authorized representation of Wild Horse Education, their individual board members, and members worldwide.

PETROLEUM ASSOCIATION of WYOMING

June 13, 2024

Pat Deibert
BLM National Sage-Grouse Conservation Coordinator
HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

re: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning. Areas of Critical Environmental Concern. BLM_HQ_FRN_MO4500174493; DOI-BLM-WO-2300-2022-0001-RMP-EIS

Dear Ms. Diebert,

The Petroleum Association of Wyoming (PAW) represents companies involved in all aspects of responsible oil and natural gas development in Wyoming, including upstream production, oilfield services, midstream processing, pipeline transportation and essential work such as legal services, accounting, consulting and more[1]. The release of the Bureau of Land Management's (BLM) Greater Sage-Grouse Resource Management Plan Amendments (RMPA) was met with cautious optimism, considering the BLM's selection of a relatively balanced Preferred Alternative and the alternatives available to the BLM within the RMPA provide a pathway to set a coordinated and rigorous management framework for GRSG habitat moving forward. However, there are also flaws in the Preferred Alternative that are discussed below.

PAW believes it is important that the BLM approach development of a final Preferred Alternative with a perspective that recognizes the Federal Land Policy & Management Act's (FLPMA) mandate for multiple use on public lands. Understanding the BLM will issue state-specific records of decision, final management decisions must consider past and current efforts of individual states and the results of those efforts. To this end, Wyoming has a robust, long-standing and nimble GRSG strategy that has proven effective.

In crafting management actions for GRSG habitat in Wyoming, it is crucial for the BLM to recognize that GSRG populations in Wyoming are the most robust of any Western state and have been relatively

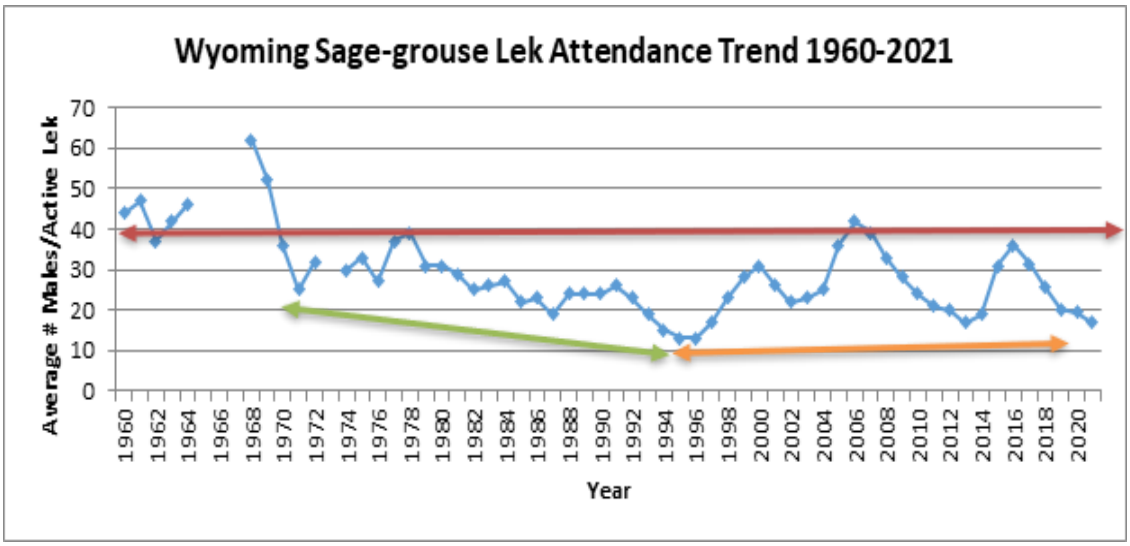
[1] PAW advocates for oil and gas development that supports sustainable production of Wyoming's abundant resources; fosters mutually beneficial relationships with Wyoming's landowners, businesses, and communities; and upholds the values of science-based, environmental stewardship. Recent studies show this industry supports over 20,000 jobs in Wyoming and contributes $8 billion in economic activity. Our industry generates significant tax revenue to the state of Wyoming, funding state and local government operations, education and public infrastructure. Eighty-five percent of the oil and gas companies operating in Wyoming are classified as small businesses.

stable for decades. Appreciating the need to protect a state-managed species and the habitat that supports it, while allowing for continued and deliberate operation of its economy, Wyoming decades ago established a government-wide regulatory framework to sustain GRSG. For oil and gas development purposes, the framework safeguards GRSG from impacts that would cause a sustained negative impact.

This framework was formalized in 2008 with the issuance of the first state executive order outlining requirements on habitat disturbance caps, coordination among state and federal agencies and a thorough process to identify and remedy anomalies in population trends. The framework has evolved through four iterations when new information is presented, or new threats identified. It is overseen by the Sage Grouse Implementation Team – a statutorily-embedded team of federal, state and local government, environmental and industrial representatives. At present, this framework oversees activities across 16 million acres of core habitat and 85 percent of the Wyoming population of GRSG.

PAW believes that the Wyoming Game & Fish Department (WGFD) lek count index[2] shows that Wyoming's state-based management framework is working, while allowing for economic activities to continue in sagebrush habitats. According to this population index, GRSG populations have remained relatively constant in Wyoming since 1995.

Figure 1



In **Figure 1** above, this metric in 1977 and 2006 (red arrow) are nearly identical at about 40 male GRSG per active lek. Nadirs (cycle troughs) are declining (green arrow) from 1970 to 1995 but stable to increasing (orange arrow) from 1995 to 2020. Data from 1970 through 2020 indicates a relatively steady and sustainable sage-grouse population as indicated by this population index. More recent information

[2] The lek count index provides the average peak number of male sage-grouse counted per active lek across the state of Wyoming.

from WGFD indicates the lek count index is now in the upward trajectory of the cycle, with a 6 percent increase from 2021 to 2022 and an additional 15 percent increase from 2022 to 2023.

As PAW noted in our comments on the proposed areas of critical environmental concern[3], the technological evolution of our industry has significantly reduced its footprint. Multiple wells are now drilled from a single well pad, reducing well pad surface disturbance and the associated roads, pipelines and electrical infrastructure needed for operations. In addition, technology-driven increased lateral lengths allow operators to capture additional resources from each well drilled, further minimizing the overall footprint.

Reclamation activities have likewise advanced. Initial surface disturbance is reclaimed in a manner which results in well pads creating biodiversity hotspots and pipelines serving as ecological corridors rather than long-term or permanent habitat fragmentation. As GRSG chicks are known to rely more on forbs and insects, with sagebrush making up only 8 percent of their diet for at least 10 weeks post-hatch[4], the fact that reclamation efforts enhance insect diversity and abundance between 3-22x as early as one year post reclamation to upwards of a decade is an encouraging sign for the rejuvenation of terrestrial food webs[5] [6] [7].

More recently, the degraded understory of sagebrush-steppe ecosystems has been brought up as a major issue to the system at large. Lack of native grass and forb propagules was highlighted in a recent USDA-authored publication. In the Jonah Field in Wyoming, a recent meta-analysis shows reclamation sites average 14 native plants per location compared to less than 10 plants in the reference system. While immediate benefits of reclamation have been quantified, the long-term increase of native plant material introduced by reclamation should not go unnoticed.

The BLM notes in the RMPA that across the GRSG range, between 2015 and 2020, sixteen adaptive management triggers were tripped and that the largest proportion came from wildfires. Oil and gas activities are one factor among many that can contribute to temporary habitat degradation but more significant is the dramatic increase in hydrocarbon production per acre disturbed.

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[3] Comments submitted to BLM via *eplanning.gov* on May14, 2024

[4] Klebenow, D.A. and Gray, G.M., 1968. Food habits of juvenile sage grouse. *Rangeland Ecology & Management/Journal of Range Management Archives*, *21*(2), pp.80-83.

[5] Curran, M.F., Robinson, T.J., Guernsey, P., Sorenson, J., Crow, T.M., Smith, D.I. and Stahl, P.D., 2022. Insect abundance and diversity respond favorably to vegetation communities on interim reclamation sites in a semi-arid natural gas field. *Land*, *11*(4), p.527.

[6] Curran, M.F., Sorenson, J.R., Craft, Z.A., Crow, T.M., Robinson, T.J. and Stahl, P.D., 2022. Ecological Restoration Practices within a Semi-arid Natural Gas Field Improve Insect Abundance and Diversity during Early and Late Growing Season. *Animals*, *13*(1), p.134.

[7] Curran, M.F., Allison, J., Robinson, T.J., Robertson, B.L., Knudson, A.H., Bott, B.M., Bower, S. and Saleh, B.M., 2024. Insect Abundance and Richness Response to Ecological Reclamation on Well Pads 5–12 Years into Succession in a Semi-Arid Natural Gas Field. *Diversity*, *16*(6), p.324.

These are important facts for the BLM to keep in mind as it crafts a final preferred alternative and Wyoming specific ROD:

1. GRSG populations in Wyoming appear stable;
2. Wyoming has a time-tested regulatory framework; and
3. Oil and gas activities are becoming more and more compatible with wildlife sustainability due to technological innovation and advances in reclamation activities.

These factors also play directly into two important federal laws guiding the BLM's decision-making in this RMPA, the Federal Land Policy & Management Act and the National Environmental Policy Act (NEPA).

FLPMA, at Section 202(c)(9), requires that "Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of this Act." This provision in FLPMA was included specifically for instances such as this: Wyoming's approach to GRSG management is effective and working, giving the BLM justification to align its GRSG strategy and management prescriptions with Wyoming.

NEPA's Declaration of National Environmental Policy, found at Section 101, declares "that it is the continuing policy of the Federal Government, in cooperation with state and local governments…to use all practical means and measures….to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill social, economic and other requirements of present and future generations…" Wyoming's strategy was developed to sustain GRSG populations and protect their habitat, while recognizing the fundamental importance of maintaining the industries that rely upon the grounds where the habitat exists. The BLM's ultimate decision in this RMPA should strive towards cooperation with the state of Wyoming.

Adaptive Management

The adaptive management framework the BLM has proposed in Alternatives 3, 4, 5 and 6 has significant flaws. The model to identify triggers has not been proven accurate to date. It may have some benefit **as one tool** but should not be the sole or primary means of identifying triggers. Additionally, the process the BLM proposes to identify the causes of triggers largely pre-determines the adaptive management recommendation: a default to authorize no activities. The BLM should rely more heavily on the entity with jurisdiction and expertise over these issues: the state of Wyoming.

<u>Targeted Annual Warning System (TAWS)</u>

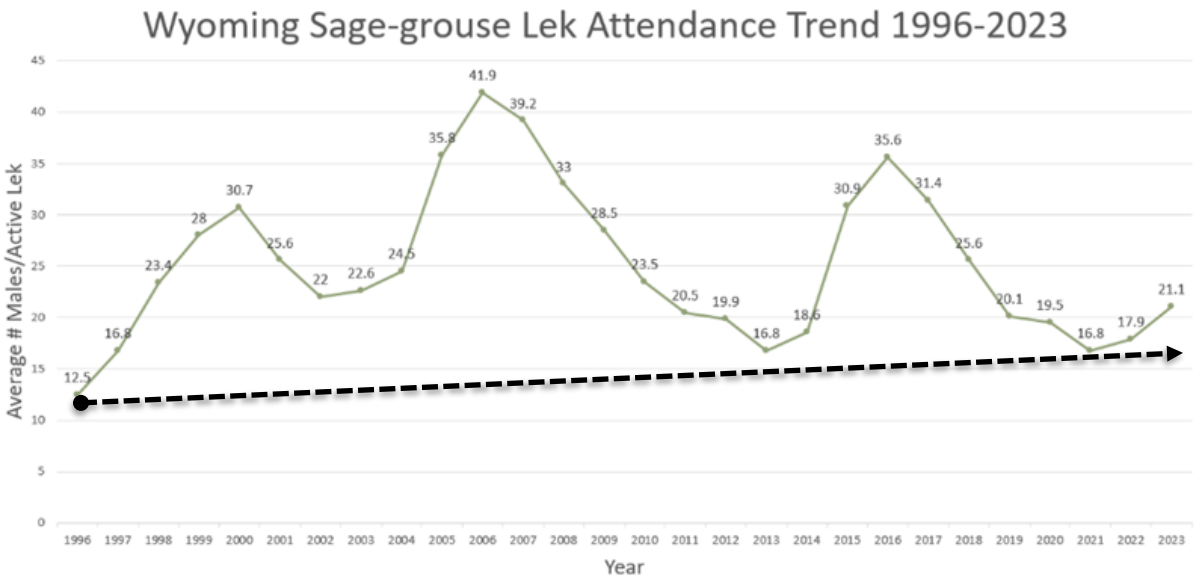
Comments on 2.5.13 Adaptive Management: The background narrative and comments below address the highly prescriptive adaptive management approach proposed by the BLM in its Preferred Alternative, which is based on U.S. Geological Survey (USGS) modeling of GRSG populations.

The BLM notes on page 2-121 of the draft RMPA (2024): "The BLM's use of a population threshold as a proxy for habitat condition does not supersede the responsibility of the state for monitoring populations and identifying populations areas of concern."

1. **Comment: PAW agrees with this statement within the RMPA but is concerned that the BLM has indeed proposed an adaptive management approach that does supersede the state of Wyoming's responsibilities as it relates to wildlife. PAW supports an adaptive management process that relies on the expertise of the WGFD as it relates to GRSG population estimates and the use of such estimates to make management decisions. Recommendations for adaptive management prescriptions based on GRSG population declines must be defined and endorsed by the WGFD - as they have legal authority to manage wildlife populations for species that are not on the endangered species list.**

Background: State of Wyoming Greater Sage-Grouse population trends: The WGFD has for the last several years publicly provided **Figure 2** as it relates to lek counts in Wyoming. A trend line has been added on Figure 2 and shows a relatively stable - yet cyclic - population nadir trend for GRSG over a nearly 30-year period. The lek count index is a mean value that normalizes the individual values from as many as a thousand annual lek counts. Hence, it is a large sampling size (relative to the overall number of leks in Wyoming) statistically designed by the WGFD (in terms of lek sampling location, annual leks selected to be counted and annual frequency) to provide an index value for the overall sage-grouse population in Wyoming. In combination with the number and percentage of active leks counted each year, the lek-count index is a valuable tool in evaluating Wyoming GRSG populations. Individual lek counts can be highly variable both spatially across the Wyoming landscape and temporally (annually) at individual leks. The overall state average for the lek count index smooths this individual lek count data. Of note, the cyclic trend observed in the overall population index is often not observed in the recorded counts at individual leks.

Figure 2



2. **Comment: PAW believes the state of Wyoming should be able to use a variety of tools to evaluate population trends for GRSG in Wyoming. The well-established lek count index should be available to WGFD as a tool to evaluate GRSG population trends. Indeed, it has been the tool of choice by the WGFD for nearly 50 years. The BLM must specifically note in the Preferred Alternative that "state wildlife departments have the flexibility to use other approaches and methodologies in combination with the USGS TAWS model to evaluate GRSG population trends within their state boundaries to determine if adaptive management should be initiated."**

Background Information: USGS TAWS Model: The USGS Open-file Report 2020-1154 titled "*Range-wide Greater Sage-Grouse Hierarchical Monitoring Framework: Implications for Defining Population Boundaries, Trend estimation, and a Targeted Annual Warning System"* (USGS 2020) provides an alternative approach to evaluating lek count data (in comparison to Wyoming's lek count index). The USGS describes their modeling approach as a "novel, range-wide hierarchical monitoring framework for sage-grouse centered on four objectives: (1) create a standardized database of lek counts, (2) develop spatial population structures by clustering leks, (3) estimate spatial trends at different temporal extents based on abundance nadirs (troughs), and (4) develop a targeted annual warning system to help inform management decisions." (USGS 2020, Abstract)

At the May 28, 2024 Sage Grouse Implementation Team (SGIT) meeting held in Cheyenne, a Wyoming BLM representative noted that neighborhood clusters (NCs) represent what is presumed to be closed populations for GRSG in the sense that these clusters represent the collection of leks and satellite leks where movement of male birds is likely constrained.

3. **Comment: The assumption of closed populations at the neighborhood clusters (NC) scale is inconsistent with historical GRSG modeling (Garton et al. 2011, 2013) that assumed rigid lek fidelity as an underlying model assumption. Hence, any references to the Garton et al (2011, 2013) population modeling as best available science should be removed from the RMPA.**

At the May 28th SGIT meeting, a BLM representative noted that in Wyoming, because of GRSG telemetry data, the Habitat Assessment Framework (HAF) Fine Scale is likely a better indication of closed populations within Wyoming than NCs. NCs as a "Population unit" and the appropriate scale for monitoring GRSG populations is highlighted in the Draft RMPA (p. 2-120): "The BLM will use neighborhood clusters identified by USGS (Coates et al, 2021) to track habitat conditions, the same spatial scale used by USGS for population trend analysis. A neighborhood cluster generally represents a GRSG population unit and includes local aggregations of leks and seasonal habitats used by birds attending those leks based on state wildlife agency and research data."

4. **Comment: The RMPA notes NCs as closed populations but the Wyoming BLM noted that the HAF Fine Scale was perhaps a better indicator of closed GRSG populations in the state of Wyoming. If GRSG can move between NCs then use of that scale for evaluating population changes and use of that scale within the watches and warning system is not necessarily appropriate. The BLM and USGS need to be transparent to the public on the underlying validity of using NCs as the population scale for evaluating GRSG populations. The BLM, in**

the final EIS, must disclose the empirical data that supports the TAWS modeling assumption that NC accurately portray closed GRSG populations. If the empirical data has not been published it must be made available for independent 3rd party review.

From the USGS 2020 report: "Wyoming intersected [climate clusters] CC-C, CC-D, CC-F and contained or intersected 114 NCs…One-hundred and nine of these clusters were used in the analysis and five were omitted because of limitations in sample sizes…These areas consisted of 2,610 leks, of which 2,342 were located within the Wyoming state boundary and represented 27.81 percent of the range-wide lek database… After extensive QA/QC, [USGS] used 1,790 leks from Wyoming in the SSM for population trend estimation (tables 4.13 and 4.14) … During 1990-2019 the TAWS for sage-grouse populations in Wyoming activated a total of 1,149 and 875 leks as watches and warnings, respectively (fig. 4.49), which was 72.1 and 54.9 percent of the sampled leks used in the analysis." (USGS, 2020, p. 177)

5. **Comment: The high number of watches and warning at the lek scale reflects the high variability of count data at individual leks and supports the underlying premise of the USGS model that GRSG can move between leks. The USGS population model needs to be but one input of an adaptive management process and should be used, in conjunction with other tools, only if a) population comparisons are performed at an appropriate scale b) the BLM specifically affirms that the lek scale is not appropriate given the assumption that GRSG often move between leks, and c) empirical data is provided supporting the assumption that the NC scale is indeed reflective of closed sage-grouse populations.**
6. **Comment: The GRSG is not a listed species. Yet the BLM proposes to manage to a standard of virtually no negative impacts to localized population units (currently assumed to be neighborhood clusters or NCs). The BLM treats every NC as equivalent to an Endangered Species Act Distinct Population Segment. The BLM does not have the statutory authority to manage a non-listed bird species at the scale of neighborhood clusters and in effect create 114 distinct population units or DPSs in the state of Wyoming.**

From the BLM draft RMPA -Table 2-15, p. 2-213: "If a habitat or population threshold is met the BLM, along with state wildlife management personnel and other stakeholders with knowledge of local conditions will initiate an assessment as soon as alerted to a threshold being hit to determine the casual factor(s)"

7. **Comment: The BLM does not have the authority to initiate an assessment or stop permitting authorizations based on population thresholds being exceeded. The words "or population threshold" should be deleted from the noted RMPA text in Table 2-15.**

The BLM is adopting in a range-wide planning document intended to last a decade or more and use a relatively recent GRSG population tool developed by the USGS: "The first step of the TAWS was an implementation of a lek clustering and sampling framework that provided a hierarchical partitioning (division of the landscape) of populations based on biotic and abiotic habitat characteristics, as well as population connectivity …. Comparisons of [lambda] [growth rates] across nested lek clusters facilitated separation of scale dependent factors that influence population trajectories…" (USGS, 2020, p. 56).

The BLM has adopted verbatim the "soft population trend threshold" (known in TAWS as a Watch) and "hard population trend threshold" (known in TAWS as a Warning) identified by the BLM as population triggers for GRSG that require action by the BLM and state wildlife agencies. The BLM then proposes to "initiate an assessment as soon as alerted to a threshold being hit to determine the causal factor (s)." It then goes on to note the needs for a team of BLM and WGFD representatives to generate a "written report" that among other things will include "recommendations of management actions to address the potential decline, recommendations of management actions to address the potential causes of decline, and the data and expertise used to reach conclusions presented in the report."

8. **Comment: The BLM provides no rationale for requiring the same level of effort for annual watches versus warning. The BLM should not initiate an extensive review process for watches. In fact, this is suggested by USGS (2020): "Watches may identify the need for intensive monitoring whereas warnings may identify the need for management intervention at stabilizing populations." (USGS, 2020, p. 59). Hence BLM's adaptive management process as outlined in the draft RMPA is inconsistent with the USGS recommendation for Watches. The BLM's preferred alternative should note "that TAWS is but one input into an adaptive management process, initiated by the state, if a hard population trend threshold is exceeded. Exceedances of soft population trend thresholds will be noted by the state wildlife agency, and result in increased lek monitoring within those NCs where Watches occur."**

9. **While the adaptive management text (RMPA, p. 2-120) clearly notes that population thresholds, as it relates to adaptive management, are based on comparisons at the NC scale. This is not clear on page 2-213 of Table 2-15. BLM needs to clearly indicate that population thresholds are based on the TAWS analysis at the NC scale in Table 2-15. (Please note comment 5 where we highlight that the NC scale may not be the correct scale in Wyoming.)**

10. **The BLM notes that habitat adaptive management thresholds apply in PHMA in Table 2-15. The BLM needs to note in Table 2-15, page 2-123 that population thresholds <u>only apply to PHMA,</u> not General Habitat.**

11. **Given that USGS has created a NC scale that does not align geographically to PHMA boundaries, the BLM must make clear that when NC population thresholds are triggered for a NC that geographically includes both GHMA and PHMA, that the adaptive management process will not be used to cease authorizations in the corresponding GHMA or to increase management prescriptions in GHMA.**

12. **The BLM notes in Tabel 2-15, page 2-128 that habitat threshold exceedances for fire may result in deferral of valid existing rights until the habitat can gain support for GRSG. The BLM is suggesting that every NC that is managed by the BLM must be managed as a distinct population segment. Loss of GRSG habitat at the NC scale does not support the elimination of all other activities at that scale. The GRSG is not a listed species and wildfire is not a valid reason to prevent O&G development of valid and existing rights.**

13. **Several of the NCs are limited in terms of the number of leks comprising the NC. USGS assumes these small NCs (with 2 or less leks) are closed populations of GRSG and that localized population declines are occurring if lek count declines at the NC level are occurring at a rate different than the trend observed in the aggregated climate cluster lek count. Lek count can be quite variable and neither the BLM in the draft RMPA nor the USGS in their original TAWS modeling provides a rational for using small NCs (with 2 or less leks) in this population comparison. The following NCs in Climate Cluster D and Climate Cluster F have 2 or fewer leks. The BLM needs to explain in the final RMPA why these small NCs are statistically valid for the proposed adaptive management approach or perhaps more importantly, choose a scale of closed GRSG populations that is more strongly supported by actual empirical data for the adaptive management process in the final Preferred Alternative.**

Climate Cluster	Neighborhood Cluster	# of Leks
D	D-027	1
D	D-028	1
D	D-030	1
D	D-066	2
D	D-086	2
D	D-135	1
D	D-136	2
D	D-142	2
D	D-147	2
D	D-150	1
F	F-001	1
F	F-118	1
F	F-044	1
F	F-045	1
F	F-046	1

<u>The Adaptive Management Process</u>

In addition to the concerns PAW has about the sole reliance on the USGS TAW model to identify triggers, PAW is likewise concerned about the process the BLM is proposing for remedying actions. Primarily, the process defaults to a position of stopping all activities until a cause can be identified. This is quite a deviation from how the adaptive management process operates now and does not align with the process recommended by the USGS.

The BLM notes in Table 2-15 for Alternatives 3-6 that: "When any adaptive management threshold is met, (and population thresholds confirmed with the state wildlife agency) a rapid assessment to identify "obvious causes will be completed within 60 days (or less). Obvious causes are those easily identified such as a large wildfire. If the rapid assessment identifies the cause, a formal CFA will not be needed. *No new permitted activities will be authorized until the rapid assessment is completed. <u>Existing</u>*

permitted activities can continue unless those activities are causing mortality to GRSG or direct loss or degradation of occupied GRSG habitat. (italic and underline added).

14. **Comment: Triggers occur at the NC scale and as noted earlier this scale seems to imply that the BLM is going to manage habitat and populations at a scale that is quite small geographically and in many cases that has a limited number of leks. Yet, the BLM is proposing to cease authorizations at this scale and even cease already permitted activities at this scale if a threshold is exceeded. Theoretically and as an example, the BLM could have a large fire in a relatively small NC and stop construction on ROWs or APDs in that NC on the premise that these already permitted activities are causing additional "direct loss or degradation of GRSG habitat." This proposed approach adds tremendous uncertainty to development activities on federal land and is premised on managing GRSG habitat and population numbers on a scale that is entirely inconsistent with a) BLM's multi-use mandate, b) the status of GRSG as a non-listed species, and c) valid and existing lease rights. It raises the possibility that where large fires occur the BLM will subsequently cease permitting and perhaps stop existing, permitted activities that involved ground-disturbing activities in these areas. The BLM is proposing to manage a non-listed species in an unprecedented manner with the adaptive management process identified. Furthermore, the BLM assumes it has the resources to manage the adaptive management process that is outlined in a timely manner. The BLM, in its Preferred Alternative, should instead adopt an adaptive management process that is either outlined in Alternative 2 or a process that is agreed upon with the State of Wyoming.**

In this same adaptive management Table 2-15 for Alternative 5 and 6 it states: "Same as Alternatives 3 and 4 except new authorizations can be considered during the rapid assessment period. Project level NEPA will specifically evaluate if any new permitted activity could contribute to any cause identified during the rapid assessment period."

15. **Comment: It is not clear how this additional text for Alternative 5 and 6 would be implemented:** "Same as Alternatives 3 and 4 except new authorization can be considered during the rapid assessment period" **Comment: The first sentence suggests that ongoing NEPA evaluation (which would necessarily be ongoing for authorization that the BLM is waiting to approve) could continue during the rapid assessment period but,** "Project level NEPA will specifically evaluate if any new permitted activity could contribute to any cause identified during the rapid assessment." **Comment: The NEPA could continue during the assessment period but would also have to include the results of the rapid assessment? This process as described is not coherent. The BLM is simply stating all new authorizations would in effect be deferred during a 60-day Rapid Assessment period.**

16. **Comment: The rapid assessment period is for 60 days, yet the BLM does not currently consistently meet statutory permitting timeframes for APDs. The BLM outlines no recourse if the 60-day rapid assessment period is not met. In effect, new authorizations could be stopped indefinitely while waiting for the "rapid" assessment" to either be completed (Alternatives 3 and 4) or integrated into the ongoing NEPA document (Alternatives 5 and 6).**

Additional text from the Adaptive Management Table 2-15: "If an obvious casual factor cannot be identified in the rapid assessment, a CFA [causal factor analysis] to identify potential causes of the adaptive management thresholds being met will be completed within 6 months of the rapid assessment.

17. **Comment: BLM outlines no recourse if the 6-month timeframe in completing the CFA is not met.**

Additional text from the Adaptive Management Table 2-15: "If a soft trigger threshold is met, new permitted activities can be considered during the completion of the CFA as long as those activities do not result in mortality of GRSG or GRSG habitat loss and degradation."

18. **Comment: USGS has suggested more intensive monitoring if a soft trigger is exceeded, not adaptive management. The BLM is extending beyond best available science in their proposed adaptive management process. Furthermore, the BLM is asking the permittee to prove a negative – that their activities do not resort in mortality. No criteria are offered on how to make these arguments. Nearly all human activity on the landscape has the potential to cause mortality (e.g., vehicle traffic). At the very least the phrase "not expected to cause mortality" should be added to the text. More importantly, the Preferred Alternative should not require more than increased monitoring if a soft trigger is exceeded, consistent with USGS recommendations for the TAWS.**

Additional text from the Adaptive Management Table 2-15: "However, if a soft threshold is met and the CFA is not completed within the above time frame, no new permitted activities will be authorized until a CFA is completed, as legally allowed. New authorizations, or reauthorization of existing permits, can then be considered if similar activities were not contributing factors resulting in meeting a project or habitat threshold. Project level NEPA will then specifically evaluate if the new permitted activity could result in additional or cumulative impacts to GRSG." (underline added)

19. **Comment: The BLM process as outlined above is not reasonable for leaseholders and permittees on federal land: "…if a soft threshold is met and the CFA is not completed within the above time frame, no new permitted activities will be authorized until a CFA is completed…" The BLM appears to be under no obligation to complete the CFA, and permitting activities could be indefinitely deferred if the adaptive management process were implemented as written.**

Additional text from the Adaptive Management Table 2-15: "If a hard threshold is met no new proposed permitted activities will be authorized until a CFA is completed."

20. **Comment: The BLM process as outlined above is not reasonable for leaseholders and permittees on federal land as the BLM appears to be under no obligation to complete the CFA. Permitting activities could be indefinitely deferred if the adaptive management process were implemented as written.**

Additional text from the Adaptive Management Table 2-15: "Local responses to thresholds in GHMA can be considered if deemed necessary by the BLM and the appropriate state agency."

21. Comment: The BLM is not clear on what this sentence means. What agency is making the "local response"? BLM should not extend adaptive management onto GHMA.

Disturbance Caps

PAW supports the BLM including in the Preferred Alternative continuing to use the inclusive 5 percent disturbance cap threshold at the project-level within PHMA in Wyoming. Wyoming's disturbance cap includes disturbances from wildfires and agricultural activities, two factors the 3 percent cap used in other states does not include. This approach ensures that overall disturbance levels are being effectively managed.

PAW believes the BLM has not adequately justified the inclusion of a second disturbance cap of 3 percent to apply at the Habitat Assessment Framework (HAF) Fine Scale. We recommend removal of this second disturbance cap threshold from the Preferred Alternative. The probability of exceeding the 3 percent cap before exceeding the 5 percent cap is unlikely because the 3 percent cap does not include wildfire or agriculture disturbances. Seemingly all this additional disturbance cap would do is create additional uncertainty for activities requiring permitting.

PAW's Preferred Action for Adaptive Management

The BLM's best option for adaptive management is outlined in Alternative 2. Alternative 2 reflects the 2019 RMPAs, which built upon and improved the adaptive management process developed in 2015. It does not constrain the BLM or the state to using only one mechanism to identify triggers but allows for optionality, including the data-driven process required in Wyoming's GRSG executive order. It involves reviewing data at local levels, with input from diverse stakeholders that have expertise in different areas regarding GRSG. Potential triggers are then elevated to a group comprised of state and federal experts (including BLM) to review, ground truth, pursue identification of causal factors and then determining appropriate adaptive management actions to reverse a trigger.

The adaptive management process in Alternative 2 is just that – a process. At its foundation, it lets data lead to decisions instead of the BLM's proposed default of cessation. The process in Alternative 2 has proven effective in Wyoming. The BLM and other experts participate, and the process evolves. It is a process that all stakeholders agree to and support.

Compensatory Mitigation

The BLM is proposing to set a proximity requirement to locate mitigation as close to the disturbance as possible. If the proximity requirements cannot be met, the activity will not be authorized. In Wyoming, this proximity standard is not always possible to achieve. Wyoming industries rely on credit markets to offset unavoidable disturbances. The conservation banks upon which the credits are derived are not always in proximity to the disturbance. This aim for proximity diverges from the BLM's proposed intent to manage GRSG at the landscape scale. At a landscape scale, the credit market works effectively and

allows for Wyoming's industries to continue. The BLM's prescriptive proximity requirements will put barriers to the system currently in place.

The BLM proposes to require mitigation to meet the standard of "no net loss". Yet this presumed standard is not clearly articulated in the RMPA. At page 2-35, the BLM proposes that no net loss would need "to increase to account for a level of risk that the compensatory mitigation may fail or not persist for the full duration of the impact…" The BLM provides no explanation of how those additional risks will be quantified. Determinations such as this are best left to the entity with jurisdiction and expertise in wildlife management, the WGFD. Our industry has experience working on these issues with the WGFD, understands the process and believes the compensatory mitigation standards are fair and meaningful.

PAW's Preferred Action for Compensatory Mitigation

PAW recommends that the Preferred Alternative defer to Wyoming's well-established compensatory mitigation plan, outlined in the GRSG executive order. Appendix F of the executive order details compensatory mitigation processes and requirements. The start of that appendix states, "Development consistent with the stipulations set forth in Executive Order (EO) 2019-3 Appendix E are sufficient to avoid negative long-term impacts to Greater sage-grouse." Appendix E covers all requirements for GRSG population areas, permitting and stipulations for development, i.e., avoidance and minimization. Wyoming's SGEO works and has compensatory mitigation requirements in the event avoidance and minimization are not enough.

Mapping Inaccuracies

The GIS mapping layers for all alternatives appear to be based on additional resources beyond GRSG leks and habitat. It appears these layers were included by error. If they were not, the BLM did not provide commentary as to why their inclusion is necessary in a planning document constrained to consider GRSG habitat.

There are additional habitat designations presented in the RMPA which do not include known GRSG habitat at all. For example, there are several polygon features that do not correlate with any known lek or habitat data, yet appear to be based on raptor nests such as golden eagles and burrowing owls. This is not appropriate for inclusion in this RMPA. In addition, there are line features that include major stipulations in the RMPA that correlate to historic trails – again, not appropriate for inclusion as GRSG habitat. Further, a proposed NSO stipulation seems to have been applied randomly to the edges of Environmental Impact Statement project area – again not correlated with known GRSG habitat or lek data.

It appears that designation of NSO, major stipulation areas and minor stipulation areas considered a multitude of resources other than GRSG, rendering avoidance or mitigation meaningless for the preservation of the species and placing undue restrictions on public lands users. Inaccurately designating

these areas as GRSG habitat will limit the ability of BLM to appropriately site projects under its multi-use mandate, which could lead to greater impacts to sage grouse at the landscape scale.

Other Issues

Leasing Preference

PAW encourages the BLM not to adopt the leasing preference system outlined in Alternative 1 and supports the Preferred Alternative as it relates to leasing. This appropriately was eliminated in the 2019 RMPA, as it was determined by state and federal agencies that it was unnecessary in light of the stipulations applied within progressive scales of habitat. The stipulations applied in PHMA inherently make leasing in GHMA more preferable. Similarly, the stipulations applied in GHMA inherently make leasing in non-habitat preferable. It is the management prescriptions in different habitat designations that creates a leasing preference system.

Alternative 3

Both FLPMA and NEPA require a balance between the human environment and the natural environment. Alternative 3 is not a balanced alternative and should not have been included, even for consideration as a bookend for analysis purposes. Alternative 3 converts all GRSG habitat to priority and would also pull in "areas of adjacent non-habitat, unoccupied historic habitat, or areas with potential to become habitat as PHMA." Nonetheless, the BLM anticipates the economic consequences under Alternative 3 to be severe. Annually, oil and gas production revenue and well development expenditures in the Wyoming analysis area would result in about 22,000 fewer total jobs (about 10,000 fewer direct jobs), $1.7 billion less in total labor income (about $1.1 billion less in direct labor income), and about $8.0 billion less in economic output (about $5.7 billion less in direct economic output) across the state compared to development under Alternative 1.

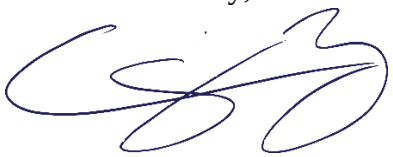
No Surface Occupancy

Alternative 4's contemplation of No Surface Occupancy across all PHMA is not based on any reasonable scientific findings. Applying NSO will reduce the BLM's options to place disturbances in locations with the least impact. PAW went into greater detail on the obstructions of NSO in our comments on ACECs and directs the BLM to that letter for further explanation.

Conclusion

The BLM should not let politics drive these decisions. The BLM's ultimate selection of management actions in a preferred alternative are of too great importance to let that happen. The options we offer the BLM to remedy these problems will result in a robust, meaningful and collaborative approach to managing Greater Sage-grouse – one that will last – for all stakeholders.

Sincerely,



Colin McKee
Regulatory Affairs Director
Petroleum Association of Wyoming

cc: The Honorable John Barrasso, U.S. Senate, State of Wyoming
The Honorable Cynthia Lummis, U.S. Senate, State of Wyoming
The Honorable Harriet Hageman, U.S. House of Representatives, State of Wyoming
The Honorable Mark Gordon, Governor, State of Wyoming
Andrew Archuleta, Wyoming State Director, Bureau of Land Management

LithiumAmericas
5310 Kietzke Lane Suite 200
Reno, Nevada 89511 USA
+1-775-827-3318
info@lithiumamericas.com

June 13, 2024

Patricia Deibert, National Sage-grouse Coordinator
Bureau of Land Management
440 W 200 S Suite 500,
Salt Lake City, Utah 84101

Submitted Electronically to: BLM ePlanning, https://eplanning.blm.gov/

RE: Bureau of Land Management Resource Management Plans Amendment Regarding Greater Sage-Grouse Conservation and Associated Draft Environmental Impact Statement

Dear Coordinator Deibert,

Lithium Nevada Corp. ("Lithium Nevada") submits these comments in response to the Bureau of Land Management's (BLM's) draft resource management plan amendment (RMPA) for greater sage-grouse (GRSG) conservation and its associated draft environmental impact statement (DEIS).[1] The DEIS/RMPA considers alternatives that would have significant adverse impacts on Lithium Nevada's work to provide an essential, domestic supply of lithium, central to the administration's goals of reducing our reliance on fossil fuels and which is a designated critical mineral.

Throughout the planning process for Lithium Nevada's Thacker Pass Lithium Project (the Project, Thacker Pass), Lithium Nevada worked with BLM and state agencies to conserve GRSG habitat; Lithium Nevada intends to continue this work in additional phases of exploration and production. But we are concerned that the 2024 DEIS/RMPA (1) would hamper work BLM has already approved and future work to develop critical minerals; (2) is substantively deficient, including through omission of any process to ground-truth designated habitat management areas (HMAs) and de-designate them in response, restrictive management actions associated with inaccurately mapped GRSG habitat, and unsupported proposed mineral withdrawal recommendations and designations of areas of critical environmental concern (ACECs); and (3) is procedurally deficient because it has been unlawfully developed at the national level using landscape-scale land use planning and does not recognize the continued validity of the 2019 RMPAs.

Lithium Nevada's operations in northern Nevada include, most significantly, the Thacker Pass Project. Thacker Pass represents our country's most significant opportunity to create a North American lithium battery supply chain for electric vehicles. The mine and processing facilities are situated at the southern end of the McDermitt Caldera, approximately 60 miles northwest of

[1] BLM Docket No. 223.LLHQ230000.L11700000.PI0000.LXSGCO000000.

Winnemucca, in Humboldt County, northern Nevada. Furthermore, the McDermitt Caldera is the largest known lithium deposit in the world, capable of supplying a significant amount of the battery-grade lithium carbonate to enable America's energy transition. This vast resource underscores the importance of BLM implementing a refined, data-driven RMPA that does not unnecessarily burden critical mineral development central to securing America's energy transition.

Additionally, and in part because Lithium Nevada recognizes that GRSG habitat conservation is aided by collocation of projects, Lithium Nevada may engage in further mineral exploration and development as well as associated projects in the Thacker Pass area. In this vein, one overarching concern we have with the DEIS/RMPA is that it severely underestimates the toll that wildfire takes on GRSG habitat—BLM's own data reveal that 87% of GRSG habitat loss in the Great Basin is due to wildfire[2]—and ignores the role that a company like Lithium Nevada can play in restoring wildfire-affected GRSG habitat.

Lithium Nevada has invested several million dollars exploring for lithium mineralization in the Thacker Pass area and will invest as much as $3 billion constructing the Thacker Pass Project and associated development. The University of Nevada has completed an economic analysis that shows the Project construction will generate more than $700 million annually in economic activity. Once in operation, Thacker Pass will generate more than $2 billion in annual economic activity in the state of Nevada. The BLM's RMPAs directly affect our ability to produce critical minerals at Thacker Pass and to explore for and develop them in the surrounding area. Our business model is dependent on consistent management of public lands based on best available science and in accord with statutes including the General Mining Law the Federal Land Policy Management Act (FLPMA), and the National Environmental Policy Act (NEPA).

Congress wisely declared that critical minerals such as lithium, "serve an essential function in the manufacturing of product[s] . . ., the absence of which would have significant consequences for the economic or national security of the United States."[3] The United States is dangerously reliant on imports and overseas supply chains for resources such as lithium needed for electric vehicle batteries and battery storage for renewable energy. President Biden's invocation of the 2022 Defense Production Act and Congress' passage of the Inflation Reduction Act, which includes a commitment to increase U.S. domestic supply of critical minerals, both emphasize the urgent need to wean America off our dependence on foreign supply chains for these minerals. We believe the revised DEIS/RMPA conflict with Congress's intentions to onshore the development of critical mineral production and urge BLM to develop Sage Grouse rules that accommodate Congress's declaration to expand U.S. critical mineral development.

LITHIUM NEVADA'S OPERATIONS AND GREATER SAGE-GROUSE

For the Thacker Pass Project, Lithium Nevada engaged in more than a decade of work on baseline environmental studies and then delayed mine permitting in order to move the project area to avoid high-quality GRSG habitat. In January 2021, BLM approved the Project through a record of

[2] *See* BLM, *Greater Sage-Grouse Plan Implementation Rangewide Monitoring Report for 2015–2020*, at 31 (2021).
[3] 30 U.S.C. § 1606(c).

decision (ROD) supported by a final environmental impact statement (FEIS). Lithium Nevada has received a conditional commitment from the U.S. DOE for a $2.26 billion loan under the Advanced Technology Vehicles Manufacturing Loan Program to finance construction of processing facilities and associated development at the Thacker Pass. Lithium Nevada commenced initial construction of the Project in March 2023.

Thacker Pass is located within what the Nevada Department of Wildlife (NDOW), the Nevada wildlife agency with primary responsibility for GRSG species conservation, has designated the Lone Willow population management unit (PMU). The EIS for Thacker Pass explained that "[t]his unit has experienced recent population declines due to wildfire and fragmentation of suitable habitat."[4] Indeed, USGS's 2016 analysis of GRSG habitat modeled most of the Thacker Pass project area, excepting the furthest eastern side, as consisting of low-quality breeding habitat or non-habitat, though most of the GRSG habitat value was modeled as medium- or high-quality brooding habitat.[5] Our analysis of the current habitat function of the project area, based on detailed surveys performed in 2019 and using the State of Nevada's Sagebrush Ecosystem Council's Habitat Quantification Tool (HQT), found that that the overwhelming majority of the project area was non-habitat for breeding, non-habitat for late brood rearing, and low-quality winter habitat.

Nonetheless, BLM's 2015 land use plan amendments (LUPAs) for GRSG habitat conservation mapped 64% of the Thacker Pass Project area as priority habitat management area (PHMA), 24% as general habitat management area (GHMA), and 12% as non-habitat. Repeating a process it completed in 2015 and 2019, the 2024 RMPA/DEIS proposes to again revise BLM's habitat designations and management actions for GRSG habitat conservation—including in the Thacker Pass project area. Generally, we do not support this new process and argue that BLM instead confirm its adoption of the 2019 RMPAs, which are supported by a 2019 EIS, a 2020 supplemental EIS (SEIS), and a 2021 ROD and which no court has vacated.

We urge BLM to significantly modify its decision-making, complying with FLPMA by developing this RMPA at the local rather than national level.

We do not support adoption of Alternatives 1, 3, 4, 5, or 6. We ask BLM to adopt Alternative 2, the "no action" alternative, which is the alternative most consistent with Nevada's Sage-grouse Conservation Plan (the State Plan, the Nevada State Plan) and which does not propose restrictive management actions not predicated on best available science. We urge BLM to:

- develop more accurate habitat designations based on ground-truthed data;
- be clear that in all future decision-making BLM always will consider site specific data to clarify or correct generalized habitat designations in the RMPA that are based on modeling;
- not adopt ACECs;
- not recommend mineral withdrawal;
- if it recommends mineral withdrawal, modify the recommended boundaries of mineral withdrawal to exclude the Thacker Pass Mine Project and North/South Exploration

[4] BLM, Thacker Pass Lithium Project FEIS, at 4-43 (Dec. 4, 2020).
[5] *Id.*

Boundary area so that a mineral exam does not impair our country's ability to increase responsible domestic development of lithium critical to the energy transition;

- develop a framework for GRSG conservation that is consistent with Nevada's Greater Sage-grouse Conservation Plan (the State Plan);
- develop accurate, detailed analysis of the climate and socioeconomic impacts should exploration and further mineral development in the Thacker Pass area be curtailed by any alternative proposed in the DEIS/RMPA.

We are grateful for BLM's consideration of these and other suggestions that we hope will help produce a more accurate FEIS/RMPA more consistent with BLM's mandate to ensure multiple use, including exploration and development of critical minerals, of public lands.

EFFECTS OF 2024 PLANS ON LITHIUM NEVADA OPERATIONS

We provide below a summary of the effects on the Thacker Pass Project and exploration/mineral development in the area from various aspects of Alternatives 1–6. These effects are accurate to our knowledge on the date of comment submittal, but we note that because of its vast scale the DEIS/RMPA, especially the table comparing alternatives, is difficult to understand and apply to facts on the ground.

Alternative 1 Effects

We do not support adoption of Alternative 1, which would re-adopt the 2015 LUPAs and which BLM is currently implementing. Though we do not believe that adoption of Alternative 1 would affect development of the Thacker Pass Project, it could affect future exploration and rights of way construction in the area.

First, Alternative 1 could affect planned exploration and possible expansion of the Thacker Pass Project because it recommends withdrawal of part of the area surrounding the mine from mineral development.[6] Withdrawal is not necessary, and BLM has not properly analyzed its socioeconomic and climate effects.

Second, Alternative 1 designates most of the Thacker Pass Project and areas to the north and south as PHMA. The Alternative 1 PHMA designation and associated restrictions are not likely to affect Thacker Pass operations because this is the plan that BLM is currently implementing. However, they could affect associated exploration projects. We question the accuracy of parts of this PHMA designation and ask BLM to develop better measures for ground-truthing and redesignating "PHMA" that is in fact degraded or destroyed habitat. We also ask BLM to clarify that re-designation of PHMA under the RMPA will not affect already-approved mitigation of impacts to

[6] Alternative 1 also recommends for mineral withdrawal part of the Thacker Pass project area BLM approved in its 2021 ROD. We understand and rely on BLM's position, which is consistent with FLPMA, that that such withdrawal is subject to valid existing rights for pre-existing mining claims and pre-existing project approvals. 43 U.S.C. § 1701(h) ("All actions by the Secretary concerned under [FLPMA]," including mineral withdrawal under FLPMA Section 204, "shall be subject to valid existing rights.").

GRSG habitat through Nevada's Conservation Credit System (CCS), which in our experience is the best approach to conserving GRSG habitat.

Third, under Alternative 1 the Thacker Pass Project would lie almost exclusively in a right of way (ROW) Avoidance Area. This designation could affect the location of future ROWs into this area, including, but not limited to, powerlines, rail lines, and roadways. Activity would likely not be prohibited, but mitigation could be required—potentially beyond what is appropriate if site-specific information is not considered in evaluating habitat conditions and mitigation requirements. We oppose designation of this ROW Avoidance Area.

Alternative 2 Effects

We support Alternative 2, which would re-adopt the 2019 RMPAs. BLM erroneously treats this as the no action alternative even though it is currently implementing the 2015 LUPAs.[7] Consistent with FLPMA's multiple-use mandate and with the General Mining Law, Alternative 2 leaves GRSG habitat in the Thacker Pass area open to project development and mineral exploration subject to mitigation requirements under the Nevada State Plan.

The Alternative 2 PHMA designation and associated restrictions are not likely to affect Thacker Pass operations because they are similar to those in Alternative 1, which BLM is currently implementing. However, as noted below, we urge BLM to ground-truth habitat mapping to ensure its accuracy for purposes of the RMPA and for any future BLM decision-making.

Alternative 3 Effects

We oppose Alternative 3.

First, Alternative 3 would designate all HMA as PHMA. The blanket PHMA designation is unreasonable because BLM does not explain why habitat designated as GHMA in all other alternatives should be designated as PHMA under Alternative 3. That designation is not based on best available science—or any science at all. It is not related to actual habitat characteristics.

Second, Alternative 3 would withdraw from mineral development nearly the entirety of the Thacker Pass Project as well as other exploration and mineral development projects Lithium Nevada may pursue in the area. We oppose this withdrawal.

Third, under Alternative 3, the northern portion of the Thacker Pass Project would be designated as an ACEC even though it is unnecessary for GRSG habitat conservation and does not meet the relevance, importance, and special management criteria for such designation. We oppose ACEC designation of this area under this and any alternative.

[7] We address below this contradiction, and we ask BLM to explain why it is not implementing its most recent 2021 ROD and has not informed the District Court for the United States District of Idaho, which enjoined the 2019 RMPAs, that it has remedied the issues the court raised in the injunction as well as reassessed and readopted the 2019 RMPAs through a 2021 ROD.

Fourth, Alternative 3 adds HMA near the project area that may oblige Lithium Nevada to purchase additional credits to achieve mitigation for projects Lithium Nevada plans. We ask BLM to ground-truth this habitat designation and, also, add to the FEIS/RMPA a process for such ground-truthing as projects are proposed as well as responsive de-designation of habitat.

Fifth, Alternative 3 would impose restrictions on PHMA that could compromise mineral exploration and development. We oppose these restrictions on PHMA.

Sixth, under Alternative 3 the Thacker Pass Project and planned exploration projects would fall primarily in a ROW exclusion area, which would result in exclusion of any newly proposed ROWs. Among other issues, the ROW allocations proposed in Alternative 3 could impede and/or hinder any further upgrades to power transmission lines to the Thacker Pass Project and construction of a potential rail line to the site.

Alternative 4 Effects

Alternative 4 involves mapping modifications which slightly expand the boundaries of PHMA in the Thacker Pass area. This alternative and its associated restrictions—which are more severe than those in Alternative 2—could require Lithium Nevada to obtain additional credits, under the CCS, for subsequent phases of the Thacker Pass Project. It could also require Lithium Nevada to engage in mitigation for additional operations in the area. We reiterate that BLM should develop mapping and habitat designations that are based on and responsive to ground-truthed data.

Further, areas adjacent to the Thacker Pass area would be newly mapped for ROW allocation under Alternative 4. We do not anticipate a ROW exclusion overlaying areas of interest to Lithium Nevada, but we again question the accuracy of BLM's mapping and the necessity of the resulting management actions.

Alternative 5 Effects

Alternative 5, BLM's preferred alternative, adjusts the habitat designations in Alternative 4. We believe these modifications are preferable to the habitat mapping proposed in Alternative 4.

Lithium Nevada sees Alternative 5 as preferable to Alternative 4—and any other alternative except Alternative 2—because it adds flexibility to the restrictions Alternative 4 proposes; in particular, it provides greater possibilities for compensatory mitigation. Though the Alternative 5 habitat designations rely on the same mapping that has not been ground-truthed, Alternative 5's habitat designations and associated restrictions are preferable to Alternatives 3, 4, and 6.

Still, Alternative 5 would impose restrictions not in place under the 2019 RMPAs, and it does not adequately explain how the best available science has changed significantly during the past five years so as to require new management actions in GRSG habitat and a new RMPA process.

Finally, areas adjacent to the Thacker Pass area would be newly mapped for ROW allocation under Alternative 5. We do not anticipate a ROW exclusion overlaying areas of interest to Lithium Nevada but again question the accuracy of BLM's mapping and resulting management actions.

Alternative 6 Effects

Alternative 6 replicates Alternative 5 except that it designates the northern portion of the Thacker Pass Project as an ACEC. As noted, we oppose designation of ACECs in Alternatives 3 and 6—even with the lessened restrictions accompanying ACECS that BLM proposes in Alternative 6.

We again reiterate the need for accurate, ground-truthed habitat designations under this and any alternative.

SUBSTANTIVE DEFICIENCIES OF DEIS/RMPA AND RECOMMENDED CHANGES

A. BLM must accurately designate HMAs and provide a process by which land designated as HMA can be de-designated on the basis of ground truthing.

BLM departs from best practices when it fails to provide a mechanism for ground-truthing its habitat designations and responding by changing designations. The Utah Plan, for example, makes "on-the-ground delineation of non-habitat" "the authoritative resource." Similarly, the Nevada Greater Sage-grouse Conservation Plan emphasizes: "At the onset of a proposed project, habitat evaluations or 'ground-truthing' of the project site and its surrounding areas shall be conducted by a qualified biologist with sage-grouse experience using [specified] methods . . . or other mutually agreed to scientifically valid techniques, to confirm habitat type."[8] This ground-truthing also has been applied in both the 2015 and 2019 RMP, yet the DEIS/RMPA does not adopt a ground-truthing requirement for all projects

Our understanding is that BLM has not de-designated HMAs once they are designated in RMPAs—meaning that areas that are not GRSG habitat but are designated as such will remain so even if based on erroneous data.
Though BLM designated much of the Thacker Pass area as PHMA in the 2015, 2019, and 2024 land use plans/plan amendments, the FEIS for the Thacker Pass Project notes that "the most significant risk factor to the Lone Willow population [management unit, which includes the Project,] is the large acreage of sagebrush habitat lost to wildfire and converted to invasive species such as cheatgrass as well as the immediate threat of loss of the remaining winter habitat for GRSG within the PMU."[9] BLM, that is, has recognized that large portions of the Thacker Pass landscape are no longer suitable GRSG habitat. Consistent with BLM's conclusion in the FEIS, our analysis of the Thacker Pass project area has found that the majority of the site burned in 1985, the south

[8] State Plan at 3.2.1.
[9] Thacker Pass FEIS at 4-43.

half burned again in 2000, the northeast corner burned in 2004, and a small patch of the far eastern section burned in 2012.

As noted, Lithium Nevada is committed to GRSG habitat conservation and for years has worked closely with Nevada's Sagebrush Ecosystem Technical Team, the body of scientific experts that recommends GRSG habitat conservation policy in the State, to avoid, minimize, and where necessary mitigate through the CCS adverse effects to GRSG. But BLM cannot adopt the kind of prescriptive action that Alternative 3 contemplates—including closing all PHMA to new fluid mineral leasing, saleable minerals/mineral materials permits and nonenergy leasable minerals leasing not associated with existing permits and leases and designating PHMA for ROW exclusion. Putting such lands off limits based on modeling without the opportunity for ground-truthing and use of the best available science and information is arbitrary and unlawful.

BLM should ground-truth its model before making habitat designations in the final RMPA and should also provide in the FEIS/RMPA a process for de-designating non-habitat erroneously designated as HMA, especially PHMA.

A. BLM must develop an effects analysis that more fully addresses socioeconomic impacts of the various alternatives and that develops a climate analysis for any restrictions on mineral exploration and development.

NEPA requires that an EIS's environmental consequences analysis address, "[w]here applicable, economic and technical considerations."[10] "[W]hen the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss and give appropriate consideration to these effects on the human environment."[11] Further, NEPA's basic requirement that an agency assess the environmental effects of a proposed action generally means that it must assess the effects on climate change of a proposed action.[12]

Strikingly, though part of the purpose and need for the DEIS/RMPA is to address the effects of climate change on GRSG habitat,[13] BLM does not address the climate effects if BLM makes exploration for and development of critical minerals more difficult. BLM's proposed ROW exclusions, various restrictions placed on ACECs and PHMA, and BLM's proposal to recommend millions of acres for mineral withdrawal puts possibly insurmountable barriers in the way of domestic production of critical minerals—including further development in the Thacker Pass area. BLM should assess the effects on climate of these restrictions.[14]

[10] 40 C.F.R. § 1502.16(a)(10).
[11] *Id.* § 1502.16(b).
[12] *See 350 Mont. v. Haaland*, 50 F.4th 1254, 1263 (9th Cir. 2022); *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017).
[13] *See* DEIS at ES-2.
[14] We address below BLM's specious argument that it could not address the effects of mineral withdrawal in the DEIS/RMPA because such withdrawal is only recommended, not decided upon, in the DEIS/RMPA.

BLM should also analyze the socioeconomic impact of the proposed alternatives in more detail than it has already. The DEIS states that mining industry accounts for more than 20% of all employment in Humboldt County.[15] But beyond this baseline fact, BLM does not address the potential risk from the alternatives it considers—particularly Alternative 1 and Alternatives 3–6—to local economies reliant on mining. Further, it does not analyze effects stemming from the fact that mines like the Thacker Pass Project provide important sources of employment and economic development for Native American tribes and environmental justice communities that live proximate to those projects.

The Department of Energy has conditionally approved a loan of nearly $2.3 billion to fund the construction of the Thacker Pass Project in order to meet the Biden administration and Congress's energy transition goals. Arbitrary restrictions on exploration represented in the RMPA runs counter to other federal administration and congressional efforts. Moreover, the DEIS/RMPA ignores the potential effect to the national economy from a decline in production of critical minerals. Congress has made clear that domestic production of critical minerals, through the kind of exploration and development in which Lithium Nevada is engaged, is essential to our economic security. The Energy Act of 2020 requires USGS to complete a national assessment of each critical mineral before the end of this year. The Inflation Reduction Act of 2022 establishes tax credits for EV batteries manufactured with domestically produced critical minerals. The 2020 Bipartisan Infrastructure Law finds: "critical minerals are fundamental to the economy, competitiveness, and security of the United States" and "to the maximum extent practicable, the critical mineral needs of the United States should be satisfied by minerals responsibly produced and recycled in the United States."[16] But BLM does not state how the restrictions it places on PHMA, the ACECs it proposes, and possible mineral withdrawal as a result of BLM's recommendation will affect critical mineral production.

BLM must address—more fully than it does in the DEIS/RMPA—effects of its proposed alternatives on climate change and local economies as well as the national economy, national security, and supply chain.

BLM should not recommend a mineral withdrawal.

The DEIS/RMPA includes information indicating that the 2015 plans, which BLM is currently implementing, are succeeding: BLM's 2015–2020 GRSG Monitoring Report found that, during that five-year period, the percent of anthropogenic disturbance in PHMA was less than one percent, below the threshold where GRSG abandon leks.[17] Without any mineral withdrawal, energy and mining features in PHMA across the GRSG range decreased by 120 features between 2015 and 2020.[18] During this time—again, with no mineral withdrawal—BLM concluded that "[t]he Great Basin Region analysis reflects a lack of large-scale energy development, with density estimates

[15] DEIS, Vol. III at 13-2-15.
[16] 30 U.S.C. § 1607(b)(1), (3).
[17] BLM, GRSG Plan Implementation Rangewide Monitoring Report for 2015–2020, at 49 (2021).
[18] *See id.* at 28.

constant across the monitoring period (approximately 0.01 features per 640 acres)."[19] Again, 87% of the loss in the Great Basin was from wildfire,[20] and between 20015 and 2019 agencies authorized only 21,680 acres of anthropogenic disturbance in Nevada PHMA, all of this offset through Nevada's CCS.[21]

Mineral withdrawal is not supported by the best available science and should reject any proposed mineral withdrawal recommendation.

If BLM adopts the withdrawal recommendation, it should not recommend withdrawal of any portion of the Thacker Pass Project or the North/South Exploration Boundary.

We urge BLM to exclude all portions of the Thacker Pass Project from the proposed withdrawal area.

In BLM's current mapping, the withdrawal covers the northern part of the Project and, given BLM's approval of the project and that Lithium Nevada clearly has valid existing rights, including these lands in the withdrawal area achieves nothing while creating potential uncertainty or efforts to further delay to our mining operation. BLM approved the Thacker Pass Project after extensive environmental review and issues surrounding project development have been extensively litigated. BLM should not open the possibility of further spurious litigation.

BLM knows the boundaries of the Thacker Pass Project: it should exclude this area from any possible mineral withdrawal recommended by the FEIS/RMPA.

Excepting Alternative 2, the alternatives proposed in the DEIS/RMPA are not consistent with the Nevada Sage-grouse Conservation Plan While NEPA does not require maximal consistency between federal and state or local land use plans, it does require that an EIS account for "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned."[22] Thus, "environmental impact statements *shall* discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or law (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law."[23]

Lithium Nevada has long relied on the State Plan and on local requirements to manage GRSG habitat and to compensate for any loss thereof as a result of its project development and mineral

[19] *Id.* at 28. It is not clear whether BLM intended to analyze mining development separate from energy development here; it does not offer a figure for mining development in the Great Basin.
[20] *Id.* at vii.
[21] *Id.* at A11-37.
[22] 40 C.F.R. § 1502.16(a)(5).
[23] *Id.* § 1506.2(d) (emphasis added); *see also* CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, at 23b, c (Mar. 16, 1981, amd. 1986) (After identifying any potential land use conflicts" between local, state, and federal plans, "the [federal] decisionmaker must weigh the significance of the conflicts.").

exploration.[24] We believe that the State Plan is the best framework for GRSG conservation in Nevada for the following reasons:

1. The State Plan specifically provides for ground-truthing "to confirm habitat type" at the outset of a proposed project.[25] By contrast, Alternative 3 provides no method for de-designating non-habitat that BLM has designated as habitat. Alternatives 4, 5, and 6 make at least some provision for mistaken designations of habitat. But, as we have explained, they do not mandate ground-truthing and in fact reverse the State Plan's project-specific process to determine whether habitat exists, instead presuming that habitat exists and establishing a process to determine that habitat does not.[26]

   BLM must ensure maximal consistency with the State Plan by providing a clear process for ground-truthing habitat designations and de-designating HMA as a result.

2. BLM mentions the CCS in the DEIS (though only once) as the "required mitigation" for Nevada. But it does not explain how or whether its mitigation framework accords with the CCS. Examples of inconsistencies include:

   a. The restrictions on use of PHMA in Alternative 3 are inconsistent with the CCS, which permits mitigation via CCS even in PHMA. The State Plan's avoidance process provides that a project proponent can proceed with anthropogenic disturbance even in PHMA so long as it satisfies certain conditions.

   b. The debit aspect of the CCS calculates functional acres lost due to a new anthropogenic disturbance. Functional acreage depends on habitat quantity and quality—it is not automatically correlated with a particular habitat designation. BLM does not appear to have a similar mechanism for calculating functional acreage.

   c. The Service Area, or the area in which credits can be exchanged within the CCS, is defined by the State's Biologically Significant Unit (BSU) areas. The BSU mapping differs from BLM's HMA mapping.

   BLM should correct or explain each of these inconsistencies with the CCS.

3. The RMPA would include a disturbance cap: in PHMA, if "direct disturbance from existing and proposed infrastructure developments exceeds" 3% at the "project scale" or in the Habitat Assessment Framework (HAF) Fine Scale habitat selection area, "new

[24] *See*, *e.g.*, Thacker Pass FEIS at 4-44–45 (explaining how Lithium Nevada will comply with the State Plan). We also aim to comply with Humboldt County's Sage Grouse Conservation Plan. *See* Humboldt County, Policy Plan for Public Lands—Sage Grouse Conservation, at *1 (Feb. 7, 2022) https://humboldtcountynv.gov/DocumentCenter/View/6200/Greater-Sage-Grouse-APPROVED-2-7-2022.
[25] State Plan at 15.
[26] DEIS at 2-19.

infrastructure projects would be deferred to the extent allowable under applicable laws . . . or valid existing rights."[27] The State Plan does not provide for a disturbance cap.

Moreover, as we note below, the 2015 LUPAs indicated that the disturbance cap does not apply to locatable minerals.[28]

Again, BLM should ensure consistency by eliminating the disturbance cap or at least explaining why it thus departs from the State Plan.

4. In the DEIS/RMPA, BLM uses the term "no net loss" and the term "net conservation gain." It is not clear whether these terms are antonyms or synonyms. In one instance the DEIS/RMPA places these terms in tension.[29] In another, it appears to use them as synonymous.[30] BLM must clarify.

   Further, it is unclear how BLM's definition of "no net loss" intersects with the State's definition of "net conservation gain," the State's fundamental requirement for GRSG habitat conservation. The DEIS/RMPA states that "[e]stablishing no net loss will require full restoration of functional habitats or enhancement of habitats to minimally support the number of GRSG present prior to disturbance at the apex of the population cycle."[31] The State Plan defines "net conservation gain" as an "objective to maintain the current quantity and quality of sage-grouse habitat within the Service Area at the state-wide level by protecting existing sage-grouse habitat or by mitigating for loss due to anthropogenic disturbances. . . . This objective will be measured by the credit to debit ratio" established through the CCS.[32]

   On BLM's definition, "no net loss" appears to rely on measurement of GRSG population stability. But "net conservation gain" relies on measurement of habitat lost. BLM does not describe, explain, or attempt to rectify this inconsistency. This creates real difficulties for regulated parties.

   BLM should ensure maximal consistency by, for all HMA in Nevada, adopting the State Plan's definition of "net conservation gain" and dispensing with "no net loss" terminology.

5. Adaptive management in the RMPA does not comport with the State Plan's framework—or, for that matter, with BLM guidance on adaptive management. For

[27] *Id.* at 2-29.
[28] *See* BLM, Nevada and Northeastern California Greater Sage-Grouse Proposed ARMPA/FEIS, at E-2 (June 15, 2015).
[29] *See id.* at ES-4 (describing "net gain vs. no net loss" mitigation strategies).
[30] *See id.* at 2-183 (Describing Utah-specific rules for "Net Conservation Gain: Apply a minimum standard of no net loss consistent with crosscutting language.").
[31] *Id.* at 2-23.
[32] State Plan at 14. We note that the State Plan refers to "no net loss" in an appendix explaining specific design features the SETT might implement. *Id.* at 141. This term is not defined in the State Plan and this use is its single appearance.

example, the DEIS/RMPA includes a hard threshold response, which automatically implements allocation or management decisions.[33] The State Plan, by contrast, does not include a hard threshold response; instead, it defines adaptive management as "[a]n adaptive approach that involves exploring alternative ways to meet management objectives, predicting the outcomes of alternatives based on the current state of knowledge, implementing one or more of these alternatives, monitoring to learn about the impacts of management actions, and then using the results to update knowledge and adjust management actions."[34]

Further, the DEIS/RMPA does not address important aspects of BLM's own Adaptive Management guidance, including its problem, design, monitor, evaluate, and adjust framework.[35]

BLM should adhere to the purpose of adaptive management—flexibility in response to shifting conditions and knowledge—by incorporating its own adaptive management guidance into the DEIS/RMPA or by adopting the State Plan's adaptive management framework.

We note that BLM's 2015 and 2019 GRSG land use plans at least attempted maximal consistency with the State Plan. The 2015 Nevada FEIS/LUPA noted BLM's "adopt[ion of] key elements" of Nevada's State Plan and mentioned Nevada's Sagebrush Ecosystem Technical Team (SETT) in the body of the DEIS/LUPA.[36] The 2019 Nevada ROD/RMPA provides that BLM will (1) notify the SETT regarding any project resulting in anthropogenic disturbance to designated habitat, (2) incorporate any State-required or -recommended mitigation into BLM's NEPA decision-making process, and (3) verify that the project proponent has coordinated with the SETT to ensure compliance with the State Plan.[37] BLM should adopt these kinds of elements and explanations in the FEIS/RMPA.

Companies like Lithium Nevada have investment-backed expectations that rely on systems established by the State Plan and by county conservation plans.

BLM should not designate the ACECs it proposes in Alternatives 3 and 6.

BLM's regulations provide that an ACEC cannot be designated unless it meets three criteria:

[33] DEIS at 2-125–2-127.
[34] State Plan at 8.
[35] *See* Byron K. Williams et al., *Adaptive Management: The U.S. Department of the Interior Technical Guide* (2009).
[36] *See* Nevada 2015 LUPA at ES-13 ("The Proposed Plan adopts key elements of the State of Nevada Greater Sage-Grouse Conservation Plan . . . and the State of Nevada Conservation Credit System . . . by establishing conservation measures and focusing restoration efforts in the same key areas most valuable to the GRSG.").
[37] *See* BLM, Nevada and Northeastern California Greater Sage-Grouse Record of Decision and Approved Resource Management Plan Amendment, at 1-5 –1-6 (Mar. 2019).

1. Relevance, or a "significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard;"[38]

2. Importance, through which the relevant "value, resource, system, process, or hazard has[s] substantial significance and values. This requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern;"[39]

3. A need for special management, meaning a management action to protect and prevent irreparable damage to relevant or important values and a management action that "would not be prescribed in the absence of the [ACEC] designation."[40]

ACEC 2, which includes part of the Thacker Pass area, does not meet the importance criterion.

ACEC 2, for the Montana Mountains, overlaps with the northern portion of the Thacker Pass area. BLM should not designate this ACEC because, in addition to the reasons stated above, this ACEC in particular does not meet the importance criterion.

BLM's importance determination for ACEC 2 rests on "[s]trong representation of the 25% BBD [breeding bird density] in NV; [c]onnects with OR population; [h]igh lek persistence; intersects three neighborhood clusters, primary neighborhood cluster shows population growth (lambda > 1.03), adjacent NCs [nesting colonies] nearly stable to declining (lambda = 0.99-0.95); [l]ow R&R [ecosystem resilience and resistance]; mostly [g]rowth area for sagebrush; about 10% of area includes Disaster Peak WSA [wilderness study area]."[41]

These characteristics do not prove importance.

1. As we have noted, breeding bird density, high lek persistence, population growth, and population connectivity do not indicate importance because these are characteristics of PHMA more broadly, which do not alone suffice for an ACEC designation.

2. Existence at a neighborhood cluster intersection—a connectivity metric—does not prove importance; nor, again, does habitat or genetic connectivity. We note that BLM Instruction Memorandum 2023-013 asks agency staff to consider "whether relevant values contribute to landscape intactness, climate resiliency, habitat connectivity, or opportunities for conservation or restoration" when it analyzes relevance and importance. But this overbroad IM cannot be used as a rule of general applicability (in violation of the APA), does not state that habitat connectivity is important, and it does not mention genetic connectivity. A vague directive cannot significantly expand the regulatory criteria for meeting importance, and this directive would have the improper result of making the vast majority of BLM-

[38] 43 CFR § 1610.7-2(a)(1).
[39] *Id.* § 1610.7-2(a)(2).
[40] MS-1613.12.
[41] DEIS, Vol. III at 5-22.

managed land in Nevada eligible for ACEC designation, contrary to FLPMA's multiple use/sustained yield mandate.

3. Low ecosystem resilience and resistance does not prove importance; if anything, it proves the opposite.

4. That the area is a "mostly growth area for sagebrush"—that is, that it has basic qualities of GHMA or PHMA, does not prove importance.

5. WSAs, common across GRSG range, do not contribute to "more than local significance." The volume of proposed ACECs in Nevada (more than 5 million acres) clearly indicates that these areas are not rare or especially unique.[42]

BLM does not explain why its proposed ACECs require special management; instead, the actions contemplated by ACEC designation could be prescribed without ACEC designation.

In the 2015 LUPAs, BLM "decided not to designate PHMA as ACECs in the applicable Records of Decision because it was determined that the management actions for PHMA would be sufficient to protect GRSG habitat and, as such, ACEC designation of PHMA was not required."[43] BLM did not revise this determination in the 2019 RMPAs—indeed, it did not consider ACECs as a management action. Nor did BLM consider ACECs in its 2020 SEIS. This is dispositive. Even if not, BLM's attempts to prove that special management is required are not convincing.

First, BLM explains that "[i]n general, management actions that protect resources (such as surface-disturbance restrictions and management for desired habitats) would help maintain and improve the relevant and important values within ACECs."[44] It adds that "[i]dentifying ACECs as ROW exclusion or avoidance areas would protect relevant and important values by reducing (for avoidance areas) or eliminating (for exclusion areas) impacts from development requiring a ROW permit. Such developments include utilities, access roads, and renewable energy projects."[45] But these management actions do not require ACEC designation.

Second, BLM adds that while "PHMA, IHMA, and GHMA allocations provide a comprehensive management framework, covering a diverse array of management actions and restrictions in Alternatives 1–6, effectively capturing GRSG habitat and most ACECs . . . ACEC designation adds a layer of specificity, enabling a more targeted approach to address unique relevant and important values that might not be fully covered by the broader allocations. "[46] To the contrary,

[42] We note additionally that in Wyoming, which has the most GRSG habitat of any state, BLM proposes to designate only 839,000 acres of ACECs. The DEIS gives no explanation for this extreme discrepancy, which points to an unscientific unevenness in the BLM's application of its own ACEC criteria.
[43] DEIS, Vol. III at 5-3.
[44] DEIS at 4-119.
[45] *Id.*
[46] *Id.* at 4-120.

ACEC designation paints stringent restrictions with a broad brush removing the more targeted approach in the 2015 plans that provided BLM the ability to address site-specific circumstances.

BLM should not designate ACECs in the final RMPA. If it does so, it must clearly explain, based on best available science, why its 2015, 2019, and 2020 conclusion that ACECs were not required has changed. It must also address the issues explained above regarding whether the ACECs meet the relevance, importance, and special management criteria.

BLM must better analyze impacts to valid existing rights and impacts of reduced mineral exploration.

BLM's omission of impacts to valid existing rights extends to its failure to assess impacts of reduced mineral exploration as a result of more onerous restrictions on surface disturbance in PHMA and ACECs, possible difficulty of proving a valid existing right in an area withdrawn from mineral location, and restrictions on rights of way. Such restrictions appear to be contrary to statute, which provides for pre-discovery access to, use of, and occupancy rights on lands open to location for mineral exploration and development.[47] Restrictions on mineral exploration also will create socioeconomic impacts and exacerbate our country's dangerous reliance on unfriendly foreign sources of critical minerals.

The FEIS/RMPA must outline an efficient method by which BLM will address valid existing rights that have not yet been adjudicated in federal court. This is particularly important because, as we have repeatedly stated in these comments, BLM's habitat designations are inaccurate.

The disturbance cap cannot legally be applied to locatable minerals, and the cap calculation should not include non-federal land.

As we have noted, the disturbance cap that BLM proposes is inconsistent with the State Plan and should be rejected for this reason alone. Moreover, BLM does not provide an explanation why a fixed disturbance cap is necessary to achieve its management goals: in our experience, adaptive management and the CCS provide better, and already-extant, mechanisms. Further, the 2015 LUPAs stated that "[a]lthough locatable mine sites are included in the degradation calculation, mining activities under the 1872 mining law may not be subject to the 3% disturbance cap."[48] BLM has discretionary authority to regulate locatable mineral exploration and development, but this is limited to preventing unnecessary or undue degradation.[49]
Alternatives 3–6, BLM plans to include in its disturbance cap calculation disturbance on non-BLM lands appears contrary to NEPA's implementing regulations. It states that such analysis is

[47] *See* 30 U.S.C. §22 (generally, "all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase").
[48] *See* Nevada 2015 LUPA at E-2.
[49] *See* 43 U.S.C. § 1732(b) (With limited exceptions, "no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress. In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.").

"consistent with the BLM's responsibility to consider cumulative impacts when making decisions for activities on public lands."[50] This misstates both RMPAs and the cumulative effects analysis that NEPA requires.

It is inappropriate for BLM to predetermine the scope of the cumulative effects analysis at the RMPA stage. An RMPA is intended to set the scene for BLM's more site-specific decisions. This permits BLM to determine that, for the RMPA, "[t]he cumulative effects analysis area for GRSG is the same as the planning area, which encompasses the entirety of the GRSG current range."[51] Whenever BLM permits a project, however, it must make a site-specific decision as to the area in which cumulative effects analysis is appropriate.[52]

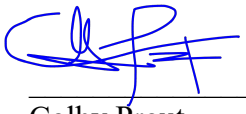
BLM should eliminate the disturbance cap, including its consideration of disturbance on non-federal land, from the FEIS/RMPA. BLM also should specify, as it did in the 2015 LUPA, that disturbance caps do not apply to locatable mineral projects.

CONCLUSION

BLM should select Alternative 2. For any alternative, BLM must ground-truth its habitat designations and provide a process for de-designating habitat erroneously designated. BLM should not recommend a mineral withdrawal or designate ACECs, and BLM must recognize the value of public land mineral location companies as proven and verifiable partners in GRSG habitat conservation and as fundaments of this country's economy and its movement toward low-carbon energy future.

We appreciate the opportunity to submit these comments, and hope they aid BLM in developing a more robust FEIS/RMPA.

Sincerely,



Colby Prout
Legal Counsel

LithiumNevada
A LithiumAmericas Company
5310 Kietzke Lane, Suite 200
Reno, Nevada 89511

[50] DEIS at 2-32.
[51] *Id.* at 4-229. As we note below, however, this west-wide planning scale does not comport with BLM regulation.
[52] 40 C.F.R. § 1508.1(g)(3).

5310 Kietzke Lane Suite 200
Reno, Nevada 89511 USA

+1-775-827-3318
info@lithiumamericas.com

Submitted via Federal eRulemaking Portal at www.regulations.gov
June 13, 2024

Pat Deibert
BLM National Sage-Grouse Conservation Coordinator
5353 Yellowstone Road
Cheyenne, WY 82009

RE: Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning

Dear Ms. Deibert:

The California Cattlemen's Foundation (CCF) and California Farm Bureau (CAFB) appreciate the opportunity to comment on the amendment of the resource management plan for the greater sage-grouse (GRSG). CCF is a 501(c)(3) California Nonprofit Public Benefit Corporation representing all cattle ranchers and beef producers throughout California. CCF's purpose is to support and engage in educational, legal, charitable, and research activities related to cattle ranching in California. The ranchers represented by CCF pride themselves on the responsible stewardship of the state's land, water, and wildlife resources. California Farm Bureau (CAFB) is California's largest farm organization, comprised of 56 county Farm Bureaus currently representing approximately 28,000 agricultural, associate, and collegiate members. CAFB strives to protect and improve the ability of farmers, ranchers and foresters engaged in production agriculture to provide a reliable, safe, and affordable supply of food and fiber through responsible stewardship of our natural resources.

Background

In 2014 and 2015, the Bureau of Land Management (BLM) amended or revised land use plans in multiple western states including California. BLM again revised plans for several of those states in 2019 including California. On October 16, 2019, the United States District Court for the District of Idaho preliminarily enjoined the BLM from implementing the 2019 Sage-Grouse Plan Amendments. Per the November 22, 2021 Federal Register Notice, BLM has now found the 2019 Sage-Grouse Plan Amendments to be inconsistent with new science and climate-related changes affecting BLM's management of public lands including drought, loss of habitat, more frequent wildfire, and less riparian areas. It is our understanding that BLM is again evaluating existing and new management approaches that supports conservation of the greater sage-grouse and sage brush habitats due to these factors as well as evaluating the impacts of land use planning decisions directed toward greater sage-grouse and sagebrush habitat conservation.

Comments on BLM's Alternatives

Of the six alternatives analyzed by BLM, CCF and CAFB generally prefer Alternative 2, or the no action alternative, as it reflects the management currently taking place per the 2019 GRSG plan amendments. The changes included in the 2019 GRSG plan amendments better aligned the plan with state plans and management strategies that sought to improve adaptive management. Addressing shortcomings of the

2015 plans, the 2019 GRSG plan amendments also included collaboration and coordination with state and local governments which, in our view, helped ensure that the best available science as well as flexibility was maintained for the benefit of impacted communities across the west.

However, acknowledging that Alternative 5 is the agency's communicated preferred alternative, we offer the following comments for the BLM's full consideration:

Wild Horses

Wild horse and burro populations continue to increase beyond appropriate management levels and expand beyond designated management areas. Over-population of wild horses and burros causes damage to federally managed lands and we have continually urged BLM in separate forums to address population levels. Should the preferred alternative be selected, we urge BLM and the U.S. Forest Service to increase management of horses and burros under the Wild Free-Roaming Horses and Burros Act in order to mitigate habitat loss. We additionally support the removal of horses to return Herd Management Areas to low Appropriate Management Levels to mitigate loss for GRSG.

Grazing and the Importance of Multiple Use

In California, cattle, sheep, and goat ranchers typically use a combination of private and public grazing lands, as well as grazed forage and purchased forage and/or grain. Many cow-calf pairs and yearlings spend time grazing on public lands, meaning those lands contributed to the final marketable value of these animals. Utilizing information from the Congressional Research Service and the United States Forest Service, we estimate that $36.05 million in cattle, sheep, and goat sales can be attributed to BLM and U.S. Forest Service public lands forage in California.

In addition to direct economic effects, there are significant indirect benefits associated with public lands grazing. Ruminant species utilize forage on otherwise marginal lands to convert low-quality forage into nutrients for human consumption. Livestock grazing also helps to preserve regional ecosystems, providing wildlife habitat, open space, and recreation opportunities. Ranchers, their families, and employees serve as frontline stewards of public lands, supporting federal land management agency employees with ground-level management and conservation activities across millions of acres of federally managed lands. Additionally, the tax revenue received on related livestock sales helps to support public safety, education, and infrastructure in rural regions that are often already underserved.

In addition to the benefits detailed above, managed grazing is not only compatible with GRSG populations and habitat requirements, but crucial to the survival of GRSG chicks, particularly in times of drought where early food sources may be scarce. We must also highlight that the discussion in Chapter 4 focusing on the consequences of livestock grazing overlooks the deterrence benefits for predators provided by grazing and grazing management. Consistent with the 2015 and 2019 plan amendments, we also oppose the retiring of grazing permits and/or conversion of permits into forage reserves or grass banks for the purposes of GRSG conservation or activities relating to GRSG management.

Chapters 2 and 4 also discuss the role livestock grazing plays in reducing fine fuels on the landscape resulting in reduced risk of catastrophic fire. Wildfires are the biggest threat to greater sage-grouse populations with over 15 million acres of sagebrush steppe burned between 2000 and 2018. In our view, proactively managing public lands for wildfire risk is one of the most effective and common sense strategies BLM could undertake to address GRSG species protection and habitat restoration.

Expansion of Areas of Critical Environmental Concern

While ACEC management is stated to be unchanged under the preferred alternative, our organizations wish to stress the detrimental effects that would result from the potential expansion of ACECs and the removal of grazing.

Of late, there seems to be a misguided focus on the use of restrictive ACEC designations despite communicated rangeland objectives. Historically, BLM has also demonstrated that ACEC designation does not necessarily mean that BLM will manage a designated area to a higher standard as many ACECs are operating without management plans. Because of this, there is great concern that ACECs could be utilized to preclude the use of BLM lands for other uses, including major and principal uses as well as those that prevent catastrophic fire.

BLM already has a number of tools to conduct preservation including the land use planning process, identification of Wilderness Study Areas, and others. The Federal Land Policy and Management Act (FLPMA) also does not intend for ACECs to be utilized to guarantee durable conservation or restoration. Expansion of ACECs on BLM lands runs contrary to FLPMA and has the potential to drive up costs for current and future BLM partners. ACEC expansion would also result in establishing a process that removes and degrades public involvement, a major concern given BLM's ongoing regulatory processes that incorporate ACECs. Rather than utilize restrictive designation to protect and promote intact landscapes, we support BLM utilizing resource management plans and subsequent land plan amendments.

Environmental consequences for these actions are shown under BLM's analysis of Alternative 3 and summarized in the Draft RMPA/EIS. The summary states, "[M]aking public lands unavailable to grazing would require increased fencing to separate federal and nonfederal grazing lands, resulting in possible habitat fragmentation, increased collision risks, increased opportunities for GRSG predators. Further, removal of grazing could allow for the buildup of fine fuels, which may increase the risk of a large-scale wildfire that would damage or destroy large areas of GRSG habitat."[1]

Importance of Local Coordination

There are many rural counties throughout California where a significant portion of the county's land base is managed by BLM. Therefore, public land management decisions and what uses are permitted are vitally important to county governments, their local economies, and their citizens, who depend on the ability to use public lands for ranching, timber production, and other traditional uses. BLM's economic report estimates that lands managed by the agency accounts for nearly $201 billion in economic output in the United States.

FLPMA Section 202(c)(9) requires meaningful coordination by the BLM with local governments with respect to land use inventory, planning, and management activities as well as meaningful involvement in the development of BLM land use programs, land use regulations, and land use decisions for public lands. Our organizations urge the inclusion of affected stakeholders through targeted and purposeful outreach by the BLM in the interest of seeking localized expertise from a wide range of partners.

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[1] BLM Greater Sage-Grouse Draft RMPA/EIS Volume 1: Executive Summary – ES.5

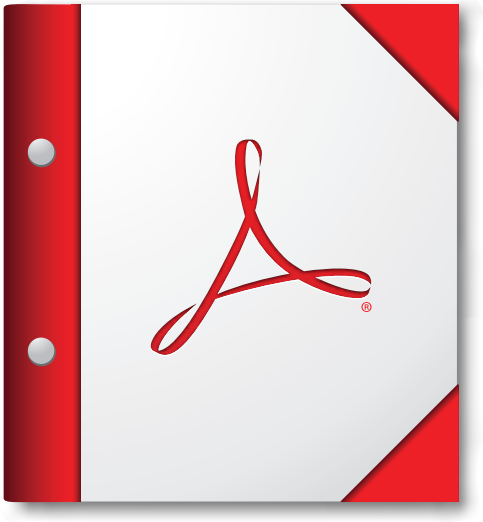
Conclusion

The California Cattlemen's Foundation and California Farm Bureau appreciate the opportunity to comment on the amendment of the resource management plan for the Greater Sage-Grouse. We welcome further discussions on future changes. In finalizing this Draft RMPA/EIS, we are hopeful that BLM will provide greater opportunities for input by producers and other local, on-the-ground experts, and will seek to encourage and promote livestock grazing as a tool for improving Greater Sage-Grouse habitat.

Sincerely,

Jared Mandrell
Director of Public Policy
California Cattlemen's Foundation

Erin Huston
Consultant, Federal Policy Division
California Farm Bureau



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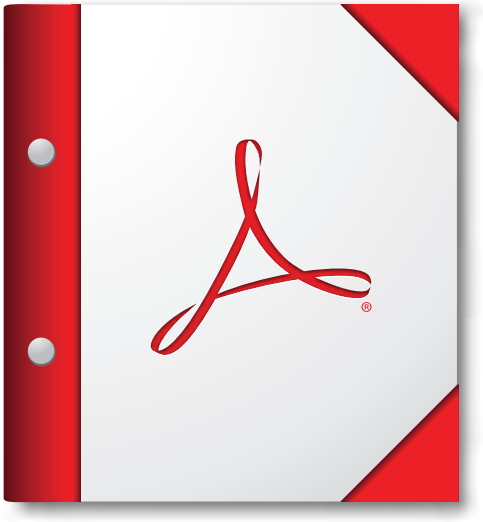

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THE WILDLIFE SOCIETY
Leaders in Wildlife Science, Management and Conservation

June 13, 2024

Dr. Pat Deibert, Sage-grouse Conservation Coordinator
Quincy Bahr, Sage-grouse Project Manager
Bureau of Land Management
440 W. 200 S., Suite 500
Salt Lake City, Utah 84101

Re: Bureau of Land Management Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Range-wide Planning (89 Fed. Red. 18963)
Submitted electronically at eplanning.blm.gov

Dear Dr. Deibert and Mr. Bahr,

The Wildlife Society (TWS) is a professional society of over 10,000 wildlife biologists, managers, educators, and students. Along with our undersigned affiliate entities, we appreciate the opportunity to provide comments to the Bureau of Land Management (BLM) on the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Range-wide Planning (hereafter EIS).

In summary, TWS recommends that BLM:

- ***Mitigation, Habitat Management and Sagebrush Restoration****:* Keep existing areas of healthy sagebrush intact, apply restoration to grow core habitat, and establish a "net gain" mitigation standard in sagebrush habitat;
- ***Energy Development and Mineral Extraction***: Site new or expanded energy development away from intact sagebrush to reduce greater sage-grouse (GRSG; *Centrocercus urophasianus*) avoidance and minimize spread of invasive plants;
- ***Livestock Grazing and Drought Response***: Include programmatic direction across Resource Management Plans (RMPs) to incorporate best available science on residual grass height, forage utilization, and/or grazing intensity in allotment management plans and grazing authorizations, and include climate change-sensitive drought contingency plans for livestock grazing in greater sage-grouse habitat;
- ***Feral Horse and Burro Management***: Prioritize herd reduction to meet current low Appropriate Management Levels (AMLs), and extend drought planning to management of horses and burros in greater sage-grouse habitat;
- ***Wildland Fire Management:*** Prioritize wildfire initial attack to combat major loss of sagebrush habitat;
- ***Minimizing Threats from Predation:*** Explore targeted, collaborative, and science-based solutions for predator control to benefit greater sage-grouse populations;
- ***Climate Change:*** Integrate climate change adaptation planning throughout all future management actions for greater sage-grouse;
- ***Land Use Planning and Plan Implementation***: Prioritize immediate and strategic action to reverse greater sage-grouse and sagebrush decline.

Science-based management solutions are needed to reverse the downward trend of greater sage-grouse populations. We appreciate that this EIS is motivated, in part, by BLM's desire to incorporate new science into its management of GRSG. Our comments are supported by the expertise of our Rangeland Wildlife, Climate Change and Wildlife, and Habitat Restoration Working Groups, as well as members across all 10 states included in the EIS.

MITIGATION, HABITAT MANAGEMENT, AND SAGEBRUSH RESTORATION

The BLM's current proposed minimum standard of no net habitat loss in its preferred alternative is insufficient for reversing trends of sagebrush loss and fragmentation and greater sage-grouse population decline.

Large, connected sagebrush landscapes are required to improve the conservation status of GRSG. Threats including global climate change, invasive species, and wildfires continue to reduce habitat available to GRSG populations. The recently-finalized Public Lands Rule — and the restoration and mitigation leases established within that rulemaking — offers a significant opportunity to enact meaningful and durable conservation of public lands and recover this species. However, references to these leasing options are notably absent from the EIS.

Habitat management and conservation efforts for GRSG should focus on continued mapping of core population areas and identifying those areas with the potential for growth into core areas in the future based on current conditions and possible climatic scenarios.

We encourage BLM to consider all available options for sagebrush restoration and nonnative annual grass control, including but not limited to the use of aerial applications of herbicides, which recent research suggests may be applied successfully at a large scale. The reestablishment of appropriate disturbance regimes and the creation of complexes of vegetation which can outcompete nonnative annual grasses should be a priority across the planning area. These actions should be prioritized on the edges of core habitat areas where they can serve to expand these areas and buffer against habitat loss and fragmentation. There is no single solution to meaningful restoration of sagebrush across the planning area. Restoration of sagebrush is expensive and may require applications of multiple treatment techniques over many years (Copeland 2024). The degradation and depletion of native understory vegetation communities is a significant challenge to sagebrush restoration, and research on the efficacy of techniques to restore these communities is still needed (Copeland 2024). Even if individual treatments are successful, progress may occur too slowly to result in a meaningful response in GRSG populations in the short-term. We hope BLM will utilize partners and other collaborators to maximize the efficacy of restoration actions, including tribes and their knowledge systems which incorporate Traditional Ecological Knowledge (TEK).

Regardless of selected alternative, we urge the BLM to establish a standard of net gain to mitigate for disturbance activities in sagebrush habitat and prioritize keeping healthy sagebrush habitat intact. We request that a full and transparent hierarchy for mitigation is included in the final implemented alternative.

ENERGY DEVELOPMENT AND MINERAL EXTRACTION

BLM must minimize disturbances associated with energy development and mineral extraction in GRSG habitat and direct development outside of Priority Habitat Management Areas (PHMAs).

Sagebrush Focal Areas (SFAs) were a fundamental component of the 2015 plans to support the U.S. Fish and Wildlife Service's "not-warranted" listing decision for GRSG. TWS supports the removal of PHMAs from consideration for energy development and mineral extraction within at least one-third of the best remaining sagebrush habitat. Growing energy demands must be balanced with the needs of wildlife populations and their habitats. This recommendation aligns with our broader policies regarding energy development, which include the directive to:

> "*Urge implementation of practical measures to avoid, reduce, and offset negative effects on wildlife populations and their habitat and connectivity resulting from energy development."*

The following synopsis of the impacts of oil and gas developments on wildlife is taken from the 2012 TWS Issue Statement on Crude Oil and Gas Development in the Rocky Mountain West:

> *"Crude oil and natural gas developments are widespread throughout North America and continue to expand due to the reliance of our society on these resources. As development continues, it is important to identify the impacts of this industry on various species of wildlife, and recognize that these effects likely are cumulative."*

Anthropogenic disturbance resulting from energy development and mineral extraction reduces GRSG habitat quality and availability, and drives wildlife habitat use across the sagebrush ecosystem. Oil and gas disturbance is tied to reduced sage-grouse chick (Aldridge and Boyce 2007), brood (Kirol et al. 2015), and yearling (Holloran et al. 2010) survival. Disturbance minimization is critical to increasing GRSG numbers and achieving viable GRSG (Kirol et al. 2020). Disturbance caps of 3 and 5 percent, as seen across the EIS-proposed alternatives, do not eliminate the negative impacts of press disturbance (i.e. sustained disturbance seen from anthropogenic activities associated with energy infrastructure) on nest-survival and brood-rearing habitat avoidance (Kirol et al. 2020). These impacts must be minimized by reducing disturbance to the greatest extent possible.

Impacts on sagebrush and GRSG by renewable energy sources and corresponding infrastructure must likewise be addressed comprehensively and minimized wherever possible.

We note our recent comments to the BLM regarding the impacts of utility-scale solar development on public lands, much of which is relevant to the EIS' planning area. Negative impacts of solar, geothermal, and wind renewable energy sources, as well as the transmission structures required for as-yet unbuilt infrastructure, are increasingly well-documented for GRSG (LeBeau et al. 2017, Gibson et al. 2018, Coates et al. 2023). We are concerned about the cumulative effects of future renewable energy development in GRSG habitat, and question whether these impacts are adequately assessed in the EIS' cumulative effects analysis. BLM must comprehensively address these impacts as it works to finalize the EIS.

BLM must control the establishment and expantion of cheatgrass and other invasive plants into sagebrush habitat by prioritizing siting of energy development away from large, intact areas of sagebrush.

Physical disturbance associated with energy development introduces the potential for establishment and expansion of cheatgrass and other invasive plants (Gelbard and Belnap 2003, Lavin et al. 2013). Construction of infrastructure for energy development and production, as well as mineral exploration and extraction (e.g. access road networks, well pads, transmission lines, pipelines, etc.) results in soil disturbance. Cheatgrass and other invasive plants quickly establish on recently disturbed soils and can rapidly invade adjoining sagebrush plant communities, degrading perennial grass and native forb understories that are critical to GRSG (Connelly et al. 2000). Because of its flammability, cheatgrass substantially increases wildfire risks to sagebrush habitat. Although some progress is being made with effective chemical control of cheatgrass, it will likely remain logistically impractical and cost-prohibitive on a large and meaningful landscape scale in the short-term. Maintaining healthy sagebrush understories is ultimately the best method to reduce risks associated with cheatgrass invasion and other invasive plants across large landscapes.

To reduce the number of future inroads for cheatgrass (and wildfire) into the sagebrush ecosystem resulting from energy development in GRSG habitat, the BLM should include direction to inventory and map the larger intact sagebrush habitat blocks that are relatively free from, or minimally impacted by cheatgrass, and to site future energy development projects outside and distant from those blocks, recognizing existing lease rights. Best available science supports a 3.1-mile No Surface Occupancy buffer around leks, a standard which should be applied consistently across the planning area (Knick and Hanser 2011, Knick et al. 2013, Coates et al. 2013).

LIVESTOCK GRAZING AND DROUGHT RESPONSE

Allotment management plans and grazing authorizations within RMPs should have programmatic direction to ensure residual vegetative structure, cover, and species diversity meet the needs of GRSG during all life stages. They should also adopt forage utilization and/or grazing intensity guidelines best suited to sustain GRSG habitat and healthy sagebrush understories, and create GRSG habitat that is more resistant to the invasion of cheatgrass and other invasive plants.

The BLM must incorporate the best available science when planning for spatial and temporal forage utilization and grazing intensity by livestock to reduce or eliminate negative impacts of livestock grazing on GRSG habitat. Importantly, the Rangeland Health and Standards and Guidelines for Grazing Administration on BLM lands were not developed with seasonal GRSG habitat needs in mind. Thus, alternative forage utilization and/or grazing intensity guidelines best suited to achieve habitat goals for GRSG are likely necessary at the allotment scale within the planning area given the variable ecology and habitat needs of the species across its range. Current best available science establishes habitat goals which promote structural heterogeneity and reduce impacts of invasive species like cheatgrass. Relevant guidelines may include, but are

not limited to, minimum forage stubble heights for riparian meadows or residual grass heights for dry upland sites.

The EIS currently acknowledges that taller grass may be associated with reduced GRSG nest predation under some conditions — such as in the context of particular predator communities or in years with particularly tall grass — but grass height does not appear to be a universal indicator of nesting habitat quality for GRSG (Smith et al. 2018). Indeed, Smith et al. (2018) found mixed support for relationships between grass height, nest site selection, and nest survival in GRSG, confirming that some findings that associations between herbaceous vegetation structure and nest success are frequently byproducts of temporally biased sampling rather than indicative of effect of concealing cover on detectability by predators (Gibson et al. 2015, McConnell et al., 2017). There is a current lack of information on the relationship between residual grass height and GRSG nest density which merits further investigation. Thus, BLM should focus on maintaining native vegetation structure, cover, and species diversity across the planning area via the implementation of appropriate forage utilization and/or grazing intensity guidelines at the allotment scale.

TWS supports the inclusion of required design features, where appropriate, for livestock water developments to reduce mosquito populations and resulting risks of West Nile for GRSG. We also support required design features and improved siting of livestock fencing to reduce GRSG mortality.

TWS commends BLM and cooperating agencies for including the guidance listed in Appendix 15 that encourages BLM to coordinate with other partner agencies and organizations, interested grazing permittees, and others to develop and implement integrated livestock grazing strategies designed to benefit GRSG across adjoining landownerships and larger landscapes. Partnerships like the *Sage Grouse Initiative*, part of the Natural Resource Conservation Service's *Working Lands for Wildlife* private-lands incentive program, increase the probability of successful conservation outcomes and to overcome the vast challenges facing GRSG and the sagebrush ecosystem.

BLM should expand Section 15.1.4 (Appendix 15) in the final selected alternative to include a provision that each RMP include a drought contingency plan for livestock grazing in GRSG habitat.

We support the BLM and cooperating agencies in addressing impacts of livestock grazing during drought on GRSG and the broader sagebrush ecosystem in Section 15.1.4 of Appendix 15 (*Livestock Grazing Management Best Management Practices and Design Features and Supplemental Information*). Drought contingency planning for livestock grazing is a basic and logical step forward as a climate adaptation strategy for management of federal rangelands, and we encourage the BLM to explicitly address climate change impacts in plans for livestock grazing and drought. Riparian, wet meadow, and other mesic habitats within the sagebrush ecosystem play a critical role in GRSG reproduction and recruitment (Donnelly et al. 2018, Lundbrad et al. 2022) and are especially vulnerable to severe degradation during drought from excessive grazing and trampling (Bureau of Land Management 2014, Oles et al. 2017, Burdick et

al. 2021). Damaged and degraded sites are also more vulnerable to cheatgrass invasion and other invasive plants (King et al. 2019, Reisner et al. 2013).

We are concerned that Section 15.1.4 currently refers to drought management planning, but does not specify a written plan. The National Drought Mitigation Center emphasizes the importance and value of having a written drought management plan. Guidance calling for a drought plan is already listed in Appendix 2 of the DEIS (Vol. 3) for the states of Colorado (page 2-CO-13) and Wyoming (page 2-WY-44). Adding similar guidance to Section 15.1.4 will expand this direction range-wide for GRSG habitat and help ensure that drought planning is given thorough consideration and documentation in each RMP. Drought contingency plans, complete with local triggers (precipitation, soil moisture, etc.), trigger dates and drought response strategies, could be included in each RMP as an appendix. TWS recognizes the complexities and hardships that drought brings to grazing permittees, given issues associated with market timing, relocating livestock, or finding alternative forage sources. Kachergis et al. (2014) discuss strategies used by Wyoming ranchers to build management flexibility into their livestock operations to better facilitate timely grazing adjustments at onset of drought.

FERAL HORSE AND BURRO MANAGEMENT

Reducing feral horse and burro herd sizes to meet current low AMLs must be a priority.

Horses and burros are not wildlife. The Free-Roaming Wild Horses and Burros Act provides for a limited number of "wild" horses and burros in designated Herd Management Areas (HMAs) managed by BLM and the U.S. Forest Service. The number of horses and burros across the planning area is estimated to be approximately three times greater than the approved, high AMLs. The continued presence of excessive numbers of horses and burros harms native wildlife like GRSG by, among other things, reducing vegetative cover and increasing bare ground.

Grazing and trampling by horses and burros amplifies damage to sagebrush caused by livestock (Coates et al. 2021, Beever and Aldredge 2011, Burdick et al. 2021). Restoration of sagebrush habitat is also impeded by the presence excessive numbers of horses and burros. If these numbers continue to grow at current rates, GRSG populations within horse-occupied areas may be reduced by >70% in the next 10 years (Coates et al. 2021). Reducing horse and burro numbers to low AMLs in each HMA must be a priority regardless of the final selected EIS alternative. TWS also urges BLM to take decisive action to remove horses and burros from all public lands where they are not legally permitted under federal law.

BLM should extend drought management planning to horses and burros in GRSG habitat.

The current **TWS Issue Statement on Feral Horses and Burros in North America** supports reductions in feral horses and burros under certain conditions:

> *"Recommend that BLM and other responsible agencies direct adequate attention and resources toward accurately and precisely identifying the impacts of feral horses and burros on wildlife populations, habitats, and other natural resources managed for public benefit by 1) developing and implementing appropriate survey and removal methodology*

2) conducting surveys and removals in a timely manner to minimize impacts on natural resources that can result from the overpopulation of feral horses and burros and 3) identifying and mitigating impacts on perennial and ephemeral riparian and wetland habitats, upland habitats, and threatened, endangered, and special status species of wildlife…"

This recommendation aligns with our comments pertaining to drought and climate change. We recommend BLM develop drought contingency plans with local triggers for horses, similar to our recommendations for livestock above. Unplanned AML reductions in response to drought must be timely in order to have the desired effect. An environmental assessment of drought management planning for feral horses and burros prepared in 2014 by the Elko BLM district in northern Nevada provides an example of drought planning for feral horses and burros.

WILDLAND FIRE MANAGEMENT

BLM should prioritize, wherever possible, wildfire initial attack as a strategy to combat loss of sagebrush habitat across the planning area.

Altered fire regimes and the resulting invasion of non-native grasses continue to be a major threat to sagebrush habitat (Crist et al. 2023). Acres of sagebrush lost to wildfire require costly restoration which may take decades to return to full health, if restoration is in fact possible. Initial attack may be more resource-intensive during early implementation, but will ultimately be more cost effective and prevent the loss of irreplaceable sagebrush habitat.

MINIMIZING THREATS FROM PREDATION

Predator control and minimization measures should be a targeted component of EIS implementation.

The EIS highlights recent literature demonstrating the impacts of predators, and especially of common ravens, on GRSG nest success. We encourage the BLM to work with state wildlife agencies, tribes, and other partners to apply predator control methods supported by best available science to minimize these impacts in targeted areas where they are most needed. Management of common ravens in particular within the bounds of the Migratory Bird Treaty Act requires a commitment to coordination between federal, state, local, and tribal agencies, and we support collaborative efforts to manage predators across the planning area for the benefit of GRSG populations.

CLIMATE CHANGE

Management actions resulting from the implementation of the EIS must include climate change adaptation planning.

Global climate change is already having profound impacts on sagebrush habitat. It is a pervasive threat which amplifies the challenges and negative impacts associated with all of the management considerations detailed in these comments. TWS continues to advocate

for conservation planning that not only recognizes the threat of global climate change, but incorporates management actions that align with the Resist-Accept-Direct (RAD) framework (Lynch et al. 2021, 2022; Thompson et al. 2020). The BLM should apply RAD and similar decision-making frameworks to address possible climate change scenarios as they relate to management for GRSG. This includes designing and implementing monitoring protocols that can detect biologically meaningful changes in GRSG populations and habitat conditions. We encourage the use of the USGS Climate Tool Box and other climate adaptation tools to support the implementation of the EIS.

LAND USE PLANNING AND PLAN IMPLEMENTATION

BLM must enact strategic protections across public lands to ensure durable conservation of sagebrush habitat.

Alternative 3 of the EIS maximizes GRSG habitat conservation and allows for the most significant opportunities to restore degraded sagebrush habitat. However, we suggest there may be additional need to designate Areas of Critical Environmental Concern (ACECs) within PHMAs to enact durable conservation gains for GRSG. PHMAs should be located strategically to protect core occupied habitat and high-quality sagebrush that can support GRSG population growth. TWS encourages BLM to evaluate all proposed new ACECs for GRSG conservation priority and, at a minimum, include those ACECs that overlap SFAs identified in the 2015 RMPA amendments.

In 2017, TWS and 23 other organizations submitted a letter to the Department of the Interior recommending against moving away from approved RMP amendments finalized in 2015. Those amendments and corresponding management planning were the result of extensive collaboration and efforts to enact landscape-level restoration of GRSG populations and sagebrush habitat. We remain supportive of those amendments – included in the EIS under Alternative 1 – with modifications to reflect new science, and urge the BLM to honor that collaborative effort by focusing on on-the-ground management for GRSG.

A summary of current plan implementation accomplishments by the BLM and cooperating entities since the approval of RMP amendments in 2015 would have better-facilitated the evaluation of proposed alternatives in the current draft EIS.

This information would help reviewers better understand the BLM's rate and effectiveness in implementing on-the-ground GRSG conservation measures, and would facilitate a better understanding of what alternative has the highest probability of achieving, in a reasonable timeframe, a successful conservation outcome to support the continuation of the 2015 U.S. Fish and Wildlife "not warranted" listing decision.

CONCLUSION

Rapid action is needed to reverse the continuing downward trend in both sage-grouse populations and sagebrush habitat.

Given documented loss of core and general habitat since the 2015 RMP Amendments (Buchholtz et al. 2023, Doherty et al. 2022; Holdrege et al. *in review,* Mozelewski et al. *in review*, Theobald et al. *in review*), coupled with the continued long-term trend of ~3% annual decline in estimated apparent abundance of sage-grouse males (Garton et al. 2011, 2015; Coates et al. 2021, 2023; Prochazka et al. 2023), we strongly recommend that the BLM not weaken these RMPs any further and increase restoration efforts to regain lost habitat. To quote Dr. Jack Connelly, a leader in sage-grouse research and conservation:

> *"Platitudes and planning will not save sage-grouse. Strong leadership and a commitment to science-driven solutions are necessary to conserve one of North America's most iconic species…"* (Connelly 2024).

We thank the BLM for its consideration of these comments, which promote science-based actions intended to result in conservation gains for this iconic species. We also recognize that to implement these actions — as well as other GRSG recovery tools like the Sage-Grouse Habitat Assessment Framework, adaptive management strategies, and compliance monitoring for projects impacting sagebrush habitat — requires significant resources and staff capacity. TWS remains an enduring supporter of increased congressional funding for the BLM's Wildlife Habitat Management programs, and an advocate for the work of the wildlife professionals tasked with implementing these programs. Any questions on these comments can be directed to TWS policy staff at policy@wildlife.org.

Sincerely,

The Wildlife Society

Chapters of The Wildlife Society
Montana
Nevada
South Dakota

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REGION 9
SAN FRANCISCO, CA 94105

June 13, 2024

Sharif Branham
Assistant Director for Resources and Planning
Bureau of Land Management
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, Utah 84101

Subject: EPA Comments on the Draft Environmental Impact Statement for the Greater-Sage Grouse Resource Management Plan Amendment (EIS No. 20240044)

Dear Sharif Branham:

The U.S. Environmental Protection Agency has reviewed the above-referenced document pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. The CAA Section 309 role is unique to EPA. It requires EPA to review and comment on the environmental impact on any proposed federal action subject to NEPA's environmental impact statement requirements and to make its comments public.

The EPA is also serving as a cooperating agency on this project. We provided scoping comments (February 7, 2022) and additional comments via cooperating agency meetings and review of the administrative draft of the EIS (December 18, 2023).

The Bureau of Land Management is proposing a Greater Sage-Grouse Resource Management Plan Amendment (RMPA) that would change specific range-wide GRSG goals, objectives, and management actions contained in 77 existing RMPs in ten states. These amendments would impact nearly 121 million acres of BLM-administered lands, including approximately 69 million acres of GRSG habitat management areas. Actions would include, but are not limited to, clarifying the existing GRSG RMP goal, updating habitat management areas with new science, providing additional waivers, exceptions, and modifications (WEMs) to fluid mineral management, designation of Areas of Critical Environmental Concern, and inclusion of new best management practices and design features for livestock grazing.

Review Summary

The EPA identified public health, welfare, or environmental quality concerns and deficiencies in the analysis that we recommend be addressed in the Final EIS. Our primary concerns are the need to: improve the clarity of the RMPA; update the overarching RMPA goal to address *increasing* GRSG distribution, abundance, and habitat connectivity instead of maintaining only; address the sufficiency of a no net loss habitat approach; include a compensatory mitigation strategy; provide additional information and clarification for fluid minerals management WEMs; and convert livestock grazing best management practices and design features into Required Design Features. Our other recommendations focus on a variety of different topics.

The EPA recognizes multiple agencies and other stakeholders have worked together for several years on this collaborative effort, and that it is inherently difficult to balance the competing needs of various parties and multiple land uses. We are encouraged to see this effort is being guided by science and we look forward to reviewing the Final EIS.

We appreciate the opportunity to participate in this effort and in the review this Draft EIS. When the Final EIS is released for public review, please send an email with a link to the document to samples.sarah@epa.gov. If you have any questions, please contact me at (415) 947-4167 or the lead reviewers for each state:

- Sarah Samples, (415) 942-3961 or samples.sarah@epa.gov (California & Nevada)
- Caitlin Roesler, (206) 553-6518 or roesler.caitlin@epa.gov (Oregon & Idaho)
- Shannon Snyder, (303) 312-6335 or snyder.shannon@epa.gov (Utah, Colorado, Wyoming, Dakotas & Montana)

Sincerely,

JEAN PRIJATEL

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Date: 2024.06.13 14:07:47 -07'00'

Jean Prijatel
Acting Manager
Policy and Operations Branch

ENCLOSURE
1. EPA's Detailed Comments

cc: Marjorie Nelson
Deputy Assistant Regional Director, U.S. Fish and Wildlife Service

EPA'S DETAILED COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE GREATER-SAGE GROUSE RESOURCE MANAGEMENT PLAN AMENDMENT – JUNE 13, 2024

Improving Resource Management Plan Amendment Clarity

The BLM's previous Resource Management Plan Amendments (RMPA) for the greater sage-grouse and the proposed changes in the 2021 RMPA, which doesn't apply to all resources previously analyzed, make implementing a newly approved RMPA more challenging and complex. This history of these amendments, including the preliminary injunction issued by the U.S. District Court for the District of Idaho that reinstated the 2015 Approved RMPA, present a challenge for BLM staff, states, and the public to understand and implement the third RMPA in less than a decade. The EPA believes that modifications and/or additions are needed in the Final EIS to improve clarity and on the ground implementation. As part of our review of the Draft EIS, we offer further details regarding this recommendation through the following comments.

State-Specific Resource Management Plan Amendments

The information presented in the Draft EIS provides state-specific differences in GRSG management across the 10 western states of the GRSG's range. It would be extremely difficult for BLM and state biologists (i.e., the responsible parties for implementing GRSG protections) to use one RMPA for all ten states. State-specific RMPAs could provide better clarity and make the RMPA easier to use. Therefore, the EPA recommends developing the state-specific RMPAs prior to the Final EIS and appending each to the Final EIS for public review.

> ***Recommendation for the Final EIS and RMPA*:** Develop clear and actionable state-specific GRSG RMPAs and append for public review.

Alternative 6

Alternative 6 includes the establishment of Areas of Critical Environmental Concern (ACEC). The Draft EIS indicates that these areas "would be the same as described for Alternative 3, but management would be less restrictive compared to Alternative 3, though generally more restrictive than the rest of Alternative 6 PHMA [Priority Habitat Management Areas]" (p. 2-3). No other information is provided to explain these differences. Additional information and organizational improvements are needed in the Final EIS to clarify allowable actions in Alternative 6 ACECs as well as demonstrate the additional protections these areas would provide.

Although the Draft EIS includes Alternative 6 in its own column in the ACEC summary table (Table 2-14, p. 2-118), all the comparison of alternatives tables include Alternative 5 and 6 together, making it difficult to distinguish the differences between these two alternatives. For example, Table 2-14 indicates that fluid mineral management Exception #2 would not apply under Alternative 6 since the more stringent Exception #1 would apply, yet Table 2-9 indicates that Alternatives 5 and 6 are the same. Another example is that Table 2-9 indicates that compensatory mitigation would not need to be completed prior to surface disturbance under Exception #2 for Alternative 6, yet Table 2-14 indicates Exception #2 would not apply to ACECs. Adding a column for Alternative 6 to each table would allow for an easier and accurate comparison of proposed activities in the Final EIS.

***Recommendations for the Final EIS*:**

- Include information clearly describing the differences in ACEC protections between Alternative 3 and 6.
- Add a column for Alternative 6 to all alternatives tables to clearly differentiate between Alternatives 5 and 6 as well as documenting specific ACEC restrictions/protections.

Disturbance Cap Calculations

For all states except Wyoming and Montana, the Preferred Alternative includes a 3% disturbance cap (with exceptions) that applies to the Priority Habitat Management Areas (Important Habitat Management Areas in Idaho) (p. 2-28). This calculation only includes disturbance related to infrastructure (e.g., oil and gas well, powerlines, mines, etc.). Other disturbances are not included, such as those related to domestic livestock grazing allotments, agricultural conversion, recreational trails and roads, residential and urban development, and wildfire. While Wyoming and Montana have a higher disturbance cap at 5%, the EPA highlights that these calculations included wildfire and agricultural conversion (p. 2-28). Montana also includes subdivisions and urban development (p. 2-30), and exceptions would be granted in both states if certain criteria are met (p. 2-34 through 2-39).

We are concerned that excluding some types of major disturbances likely results in calculations that underestimate actual disturbance and that there is potential to exceed the caps in certain situations. To address discrepancies between states and the potential to underestimate actual disturbance, we recommend that the Final EIS and RMPA disturbance and density calculations include all types of major disturbances including domestic livestock grazing allotments, agricultural conversion, recreational trails and roads, residential and urban development, and wildfire to reflect a more accurate assessment of relevant disturbance and density impacts in the habitat management areas and to lower the cap if calculations change.

***Recommendations for the Final EIS and RMPA*:**

- Include all forms of disturbance in the disturbance and density calculations.
- Include a mechanism to adjust the cap further downward if adding all types of disturbance may lead to disturbance above 3 and 5%, depending on the state.
- If the BLM does not include all disturbances in the disturbance and density calculations, discuss what the best available science indicates regarding the effects of not including these other types of disturbances to GRSG and the ability to reach the RMPA's goal.

RMPA Communication Strategy

Due to the previous ARMPAs and complexity of the Draft EIS and its associated RMPA, communicating the new changes and requirements to BLM field offices and state wildlife agencies is critical. A robust communication strategy is needed to clearly communicate the proposed changes of the selected alternative in plain language. This may include the providing training for BLM and state biologists, factsheets, and/or white paper guidance.

We also highlight the need to ensure that Management Decisions and Required Design Features are being incorporated into projects on BLM lands as required. In the EPA's Section 309 role, we frequently find that Management Decisions and Required Design Features are absent from NEPA documents. In addition, if a NEPA document contains Required Design Features, the rationale for dismissal of other

categorical Required Design Features is often absent. We have expressed these concerns during our role as a cooperating agency and continue to recommend that BLM offices ensure this information is included in all NEPA analyses applicable to GRSG. An effective method to address this major issue could be communicating these requirements through the new RMPA changes.

***Recommendations*:**

- Create a communications strategy for implementing the new RMPA and include this information in the Final EIS.
- Work with state wildlife agencies to develop the most effective method to communicate the proposed changes.
- In any communication formats, include a reminder that Management Decisions and Required Design Features are required.

Resource Management Plan Goal

The goal of the 2015 RMP was to "[m]aintain and/or *increase* sage-grouse abundance and distribution by conserving, enhancing or restoring the sagebrush ecosystem upon which populations depend in cooperation with other conservation partners" (p. 2-9, emphasis added). The stated goal for this current planning effort is "to conserve, enhance, restore, and manage GRSG habitats to support persistent, healthy populations, consistent with BLM's Special Status Species Management Policy (BLM-M-6840) and in coordination and cooperation with state wildlife agencies. Habitat conservation and management should *maintain* existing connectivity between GRSG populations" (p. 2-9, emphasis added). It is unclear why *increasing* GRSG distribution, abundance, and habitat connectivity is not included in the goal of the Draft EIS given ongoing range-wide population declines.

Several new authorities since the 2019 ARMPA address the need for increasing habitat connectivity, thereby supporting this component of the 2015 ARMPA goal. The EPA understands that BLM's *Habitat Connectivity on Public Lands* Instruction Memorandum (IM 2023-005) (p. 3-20)[1] specifically updated the BLM's *Wildlife and Fisheries Management* and *Special Species Management* manuals "to provide for increased habitat connectivity." The Council on Environmental Quality's *Guidance to Federal Departments and Agencies on Ecological Connectivity and Wildlife Corridors* memo (March 21, 2023)[2] also reinforces the need to promote greater connectivity, including the recognition that "[i]ncreasing connectivity is one of the most frequently recommended climate adaptation strategies for biodiversity management."

***Recommendations*:**

- Include the language from the 2015 ARMPA to address increasing distribution, abundance, and habitat connectivity in the stated goal for the Final EIS and RMPA.
- If the BLM does not modify the goal as recommended above, include the basis and rationale for not including it in the goal.

[1] Bureau of Land Management. (November 18, 2022). *Habitat Connectivity on Public Lands Instruction Memorandum (IM 2023-005)*. **https://www.blm.gov/policy/im-2023-005-change-1**

[2] Council on Environmental Quality. (2023, March 21). *Guidance to Federal Departments and Agencies on Ecological Connectivity and Wildlife Corridors* memo (March 21, 2023) **https://www.whitehouse.gov/wp-content/uploads/2023/03/230318-Corridors-connectivity-guidance-memo-final-draft-formatted.pdf**

No Net Habitat Loss and Compensatory Mitigation

The Draft EIS states that Alternatives 3 through 6 contain a minimum of no net habitat loss (p. 2-22). According to the U.S. Fish and Wildlife Service's 2014 Range-Wide Mitigation Framework for GRSG, mitigation "[p]rograms that are structured with a goal of only no net loss … are unlikely to positively influence the conservation status of the species" and that "a mitigation program for sage-grouse should address how impacts will be avoided and how a net conservation gain will be achieved by compensatory mitigation for unavoidable impacts to sage-grouse across all habitats." Considering this framework, it is unclear if Alternatives 3 through 6 would provide the regulatory certainty needed to ensure GRSG would remain 'not warranted' for listing. If there is more recent science to support a conclusion that a no net loss mitigation goal would be sufficient to avoid listing, we recommend summarizing and referencing those studies in the Final EIS.

The Draft EIS also states that impacts that cannot be avoided or minimized to no net habitat loss would be compensated to fully offset both direct and indirect impacts to habitat function (p. 2-23). However, the Draft EIS does not provide further information (e.g., a compensatory mitigation strategy), including mitigation ratio(s). Without this information, it is difficult to evaluate how Alternatives 3 through 6 would meet the goal of the RMPA to conserve, enhance, restore and manage GRSG habitats to support persistent, healthy populations, and maintain existing connectivity between GRSG populations. More information is needed in the Final EIS to support the no net loss habitat standard.

***Recommendations for the Final EIS and RMPA*:**

- In coordination with the USFWS,
    - Disclose how Alternatives 3 through 6 provide the regulatory certainty needed to ensure GRSG would remain 'not warranted' for listing under ESA and include the corresponding evaluation, and
    - Evaluate and include a range of mitigation ratios.
- Include a compensatory mitigation strategy and ensure the strategy includes the following:
    - Methodology and justification for the mitigation ratios,
    - Conservation standard that requires the mitigation to benefit the species since that would set a benchmark with which to measure mitigation proposals, and
    - Monitoring and a timeframe for completion of mitigation actions to reduce the lag effects between impacts and functional mitigation.
- Consider whether a conservative approach to compensatory mitigation is necessary for mitigation projects due to the time required to improve or restore sagebrush habitats, which can be decades long in areas impacted by climate change (e.g., persistent drought), and the uncertainty of many types of habitat treatments (National Technical Team 2011).
- Require that all mitigation efforts be continued for the duration of the impact.

While the Draft EIS states that compensatory mitigation "should be durable, ensuring it will be resilient and persist as GRSG habitat" (p. 2-22), it is unclear how the BLM would ensure and maintain conservation gains despite future BLM land use authorizations in habitat management areas. Section 2.3.5 of the Draft EIS also states that compensatory mitigation "should be completed prior to

associated actions occurring" (p. 2-22). The EPA is concerned that Alternative 5 may contradict this requirement in that "compensatory mitigation would not have to be completed and functioning prior to being able to *grant the exception*" (p. 2-55, emphasis added). More information and clarification are needed in the Final EIS to better illustrate the process between granting an exception and surface disturbance and whether that would include completed and functioning mitigation.

***Recommendations*:**

- Disclose how mitigation and restoration projects would be durable and maintain conservation gains despite future BLM land use authorizations in habitat management areas.
- Describe why Exception #2 under Alternative 5 would not require compensatory mitigation to be completed and functioning prior to being able to grant the exception when Section 2.3.5 states that all compensatory mitigation should be completed prior to associated actions occurring.

Fluid Minerals Management

Waivers

The Draft EIS states that waivers of the No Surface Occupancy stipulation on existing leases could be granted after documenting "that the lease with the GRSG No Surface Occupancy stipulation is no longer in PHMA" for leases that were issued when the parcel was previously classified as a Priority Habitat Management Area (p. 2-62). While the Draft EIS indicates that the BLM would coordinate with the appropriate state wildlife agency, we recommend obtaining the state's approval prior to issuing a waiver.

***Recommendation for the Final EIS and RMPA*:** Require state wildlife agency approval prior to issuing a waiver in former PHMA habitat.

Exceptions

The Draft EIS states that fluid mineral management Exception #1, which is applicable to the No Surface Occupancy stipulation within 0.6 miles of active leks, could be considered "if the proposed location on public lands would be undertaken as an alternative to a similar action occurring on a nearby non-public lands parcel…and development on the public parcel in question would eliminate impacts on more important and/or limited GRSG habitat… on the non-public nearby parcel" (p. 2-50). We understand that to approve this exception, one of three criteria must be met and that benefits must last for the duration of the proposed action's impacts on public lands. The Draft EIS provides an example of an easement to ensure that benefits would last; however, no additional detail is provided. The EPA recommends ensuring the protection is in place prior to allowing any surface disturbance activities to occur.

In addition, it is unclear what would happen under Exception #1 when the protection on private lands ends and how this would compare to the impacts on the BLM lands. For example, it is likely that GRSG would not return to BLM lands after opening to fluid minerals management, yet the private land could be reopened resulting in additional impacts to GRSG. These impacts are not reflected through the current strategy. We recommend working with state agencies to determine if additional mitigation

would be needed to ensure future impacts on private lands would not occur once an easement or similar mechanism is lifted.

We are also concerned that in Exceptions #1 and #2, a BLM Authorized Official could override a state biologist that does not concur with granting the exception if one of the three criteria is met. It is unclear how the BLM made this decision, and supporting information is needed for the public to understand the scenarios for when BLM could override a state biologist's expertise.

***Recommendations for the Final EIS and RMPA*:**

- Ensure protection of private lands are in place prior to any surface disturbance activities on BLM lands.
- Work with state agencies to determine if additional mitigation would be needed to ensure future impacts on private lands would not occur once an easement or similar mechanism is lifted.
- Provide more information on why the BLM could override the state wildlife agency and include examples to better demonstrate specific circumstances.

Alternative 6 Areas of Critical Environmental Concern

Although Alternative 6 establishes Areas of Critical Environmental Concern, it is unclear what additional protections would be provided in these areas. Table 2-14 indicates that ACECs would remain open, and that Exception #1 would apply (p. 2-118); however, it is unclear if Exception #2 or any modifications would also apply (see our comment on Alternative 6 above). The Final EIS needs more information to clearly state the additional protections that ACECs would provide regarding fluids mineral management under Alternative 6.

***Recommendation for the Final EIS and RMPA*:** Clarify the additional protections that would be in place for Alternative 6 under ACEC designation for fluid minerals management.

<u>Livestock Grazing Management</u>

Land Health Standards

The Draft EIS does not disclose information on rangeland health and grazing, including what percentage of acreage meets the BLM's Land Health Standards. In addition, it is unclear if grazing permit renewals on BLM land were authorized without conducting a site-specific analysis under NEPA and what percentage of permits issued without a NEPA analysis included significant environmental resources (e.g., PHMA). This information is critical to the livestock grazing management analysis.

***Recommendations for the Final EIS and RMPA*:**

- Include data on rangeland health and grazing to demonstrate when rangeland and grazing conditions fail to meet Land Health Standards.
- Prioritize Land Health Standard assessments and grazing permit renewals in GRSG habitat and include timeframes for completion.
- Include provisions requiring future NEPA analyses prior to issuing or renewing livestock grazing permits in GRSG habitat and provide specific mechanisms to make adjustments during the permit term when allotments fail to meet GRSG goals and objectives, including achievement of Land Health Standards relevant to GRSG. Indicate that the

BLM could determine changes are needed to the terms and conditions of the grazing permit such as season of use, number of livestock, or additional monitoring. Include a timeframe for completion of adjustments.

- Prioritize monitoring and enforcement of grazing permits in GRSG habitat where Land Health Standards are not being met or have not been assessed.

Best Management Practice and Design Features

Conversion to Required Design Features

According to Appendix C Required Design Features of the 2015 ARMPA, which the EPA understands would remain as part of the 2021 RMPA, Required Design Features "establish the minimum specifications for certain activities to help mitigate adverse impacts." Therefore, it is unclear why the Draft EIS includes livestock grazing best management features and design features in Appendix 15 to be *considered* during implementation of the RMP instead of including these as RDFs (p. 15-1). By including these measures as RDFs, managerial discretion is limited and rationale must be provided for dismissal, which could lead to better protection for GRSG. For example, when current livestock management practices are determined not to be meeting or making progress towards meeting the special species status Land Health Standard, the Draft EIS includes potential modifications that *could* be applied, rather than required (p. 15-2). Another BMP *encourages*, instead of requiring, minimal vehicle use and maintenance activities associated with livestock management during lekking hours within 0.6 miles of a lek.

The Draft EIS also states that these measures may be varied if "[a]n alternative BMP, a state-implemented conservation measure, or plan-level protection is determined to provide equal or better protection for GRSG or its habitat." It is unclear which individuals or groups would be authorized to reach this determination.

***Recommendations for the Final EIS*:**

- Convert BMPs and design features into RDFs.
- If the BLM does not make proposed livestock measures RDFs, discuss which individuals or groups would be authorized to reach this determination and establish a decision framework through which such a determination may be reached.

Invasive Species

Appendix 8, Habitat Indicators and Benchmarks, contains an invasive grass habitat suitability objective of <2% cover. To meet that objective, we recommend including additional BMPs or design features to prevent the spread of invasive weeds by livestock. Examples might include restrictions on transferring livestock from allotments where invasive weeds are present to allotments where invasive weeds have not been detected. We also recommend considering revising the statement on page 15-37 that RMPs "[d]on't need a specific management action related to weeds in livestock grazing." BMPs and design features meant to limit the spread of invasive weeds by domestic livestock are important as livestock can disperse invasive and introduced plants across rangelands by ingesting and passing seeds in their fecal matter or by the attachment of seeds to skin and fur. It is unclear how to reach the corresponding objective of not exceeding 2% invasive annual grasses without corresponding management actions, specifically actions that would be needed if this objective has not been met.

***Recommendations for the Final EIS*:**

- Include additional BMPs or design features to prevent the spread of invasive weeds by livestock.
- Include specific actions that can be taken if the <2% cover objective has not been met.

Additional Measures

The EPA believes there are additional opportunities to address livestock grazing management more comprehensively through the proposed protective measures.

***Recommendations*:** Consider the following measures to strengthen protections for GRSG regarding livestock grazing management.

- Include reductions in Animal Month Units within grazing allotments, additional monitoring, and the inclusion of livestock buffers in select areas, such as riparian areas or GRSG leks, as additional potential modifications (p. 15-2).
- Ensure that any tools or software are readily available for GRSG habitat use-pattern mapping or habitat monitoring to strategically adjust livestock distribution to benefit occupied GRSG breeding habitat (p. 15-2). Provide guidance or instructions for conducting this mapping or monitoring process.
- Discuss including strategies for livestock management during drought conditions in grazing authorizations within GRSG habitat, such as pasture deferment or rest, modified livestock grazing rotation, and changes in grazing intensity or livestock numbers. We also recommend including strategies applicable *before,* during and *after* drought periods as management options are more limited when droughts are developing or present.

Dismissal of Best Management Practices or Design Features

The Draft EIS includes the rationale for why the listed livestock grazing BMPs and design features may not apply in every circumstance (p. 15-1); however, there is no requirement for the BLM to document its justification for when certain BMPs or design features do not need to be followed by the operator. Requiring this justification would help ensure that BMPs and design features would be followed unless their use is not feasible or not appropriate.

***Recommendation for the Final EIS and ARMPA*:** Require documented justification for when certain BMPs or design features do not need to be followed by the operator.

Livestock Grazing Monitoring

At several points in Appendix 15, the BLM states that monitoring, including monitoring of livestock impacts, is not an RMP decision but a decision based on available staff and budget (see, e.g., page 15-22 and page 15-27). 43 C.F.R. § 1610.4-9 requires that land use plans establish intervals and standards for monitoring and evaluations, based on the sensitivity of the resource involved. The BLM Land Use Planning Handbook 1601.1 discusses how to implement this requirement in RMPs. We offer the following recommendations to address this apparent discrepancy.

***Recommendations for the Final EIS*:**

- Discuss the reasons for concluding that monitoring is not an RMP decision and cite to any relevant BLM guidance for the development of RMPs in support of this approach.

- If no relevant guidance is identified, the EPA recommends that the BLM reassess whether monitoring should be included as an RMP action.
- Include monitoring plans in RMPs since the effectiveness of management actions and the achievement of goals and objectives would not be known without monitoring.

Environmental Consequences

The analysis of environmental consequences in Chapter 4 does not characterize the specific nature and magnitude or intensity of the resource impacts that would occur among the alternatives in detail. Instead, relative comparisons are made between the alternatives, and it discusses the impacts mostly in terms of numeric outputs (e.g., percent of acres managed under different management designations) rather than outcomes for GRSG.[3] This makes it difficult to understand the nature and magnitude of specific impacts to GRSG and its habitat, and this information is relevant to understanding the environmental consequences of the proposed alternatives and for providing recommendations for best management practices (BMPs) and mitigation.

> ***Recommendation for the Final EIS*:** For all alternatives, characterize in detail the specific nature and magnitude or intensity of the resource *impacts* that would occur.

Lek Protections

The Draft EIS states that "[e]stimated trends show 37.0, 65.2, and 80.7-percent declines in abundance rangewide during short (17 years), medium (33 years), and long (53 years) temporal scales, respectively" (p. 3-5). We note that many of the lek protections in the Draft EIS only apply to active leks, and it is unclear whether protection for inactive leks would also benefit the species. For example, if multiple active leks are extirpated by an activity, inactive leks could become active again. Protecting all leks, regardless of status, ensures that these areas are protected and available to GRSG should they need to find new locations to mate as habitat conditions shift over time. Additionally, inactive leks in a degraded environment may be used in the future as habitat conditions improve.

> ***Recommendations*:**
>
> - Work with the USFWS and state agencies to determine whether protections to inactive leks could help reverse the long-term population declines.
> - In the Final EIS, discuss whether and to what extent GRSG may visit currently inactive lekking locations to find mates.

Mitigation, Monitoring, and Adaptive Management

The Draft EIS does not include mitigation, monitoring, and adaptive management plans with established timelines, identification of responsible parties, evaluation criteria, thresholds that would trigger a change in management, and examples of changed management actions that could be implemented. Considering the current state of GRSG populations, developing these plans will be critical.

[3] For example, the Draft EIS states, "Impacts from designating GRSG habitat as HMAs would be similar to those described for Alternative 1, though the BLM would manage approximately 7% more PHMA than Alternatives 1 and 2 and 10% fewer acres of GHMA (Table 2-3, p. 2-12). Impacts from applying a 3% cap would be the same as described for Alternative 4, except in WY and MT (see State-Specific Environmental Consequences). Impacts from exceeding the 3% disturbance cap would be similar to those described for Alternative 4, but more exceptions would be allowed, which may result in increased development and disturbance to GRSG and habitat" (p. 4-30).

***Recommendations*:**

- Develop mitigation, monitoring, and adaptive management plans with established timelines, identification of responsible parties, evaluation criteria, thresholds that would trigger a change in management, and examples of changed management actions that could be implemented. Ensure that plans are designed to account for accelerating effects of climate change.
- Utilize a precautionary approach that would select relatively more protective measures at first and use adaptive management to adjust measures over time as GRSG populations increase or achieve sustainability, as opposed to a reactive approach that would adjust only after impacts have become more severe than currently occurring or even irreversible.

Wildlife and Special Status Species

Right-of-Way Exclusion Exceptions

In discussing potential impacts to fish and wildlife in the context of lands and realty management, the Draft EIS states that "[i]n areas managed as ROW exclusion, the BLM would prohibit all development of ROWs, with some exceptions provided" (p. 4-48). It is unclear what these exceptions would be, if a decision framework exists for determining whether exceptions would apply, or if opportunities for the public participation would be available in the process.

***Recommendation for the Final EIS and RMPA*:**

- Discuss right-of-way exclusion exceptions or provide a reference to a source that includes such a discussion and summarize it in the EIS.
- Establish a decision framework for determining whether exceptions would apply.
- Include opportunities for public participation in the exception process.

Renewable Energy Management Minimization and Compensation

In the context of discussing renewable energy management and fish and wildlife, the Draft EIS states that "the inclusion of minimization measures and compensation to maintain GRSG habitats consistent with state agency habitat designations (e.g., restoration, connectivity, seasonal, or other), and to preclude negative impacts to any adjacent PHMA habitats would reduce the potential for those impacts on wildlife in high value and seasonal GRSG habitats" (p. 4-61). The Draft EIS does not explain which minimization measures and compensation are being referred to in this statement and how they would be protective of fish and wildlife.

***Recommendation for the Final EIS and RMPA*:** Explain what minimization measures and compensation would be used to maintain GRSG habitats consistent with state agency habitat designations and to preclude negative impacts to any adjacent PHMA habitats and describe how these would be protective of fish and wildlife.

Minerals Management

Impacts to biological resources related to mining activities are not considered in the Draft EIS. Specially, big game habitat fragmentation and potential effects on fish and amphibians caused by water quality impacts are not included.

***Recommendation for the Final EIS*:** Discuss potential impacts relating to big game from habitat fragmentation and fish and amphibians from by water pollution relating to mining.

Updating and Adding Citations

The EPA notes that the NatureServe 2023g on page 3-27 does not support the statement that Pinyon jay "typically locate their nests usually within half a mile of the habitat edge." A different citation is needed in the Final EIS to support this information. In addition, citations are also needed for the statement that "[l]arge expanses of homogenous closed-canopy pinyon-juniper woodland that have become more common over the past century are largely unsuitable for the birds" as well as the Great Basin Bird Observatory radio-telemetry study, also on page 3-27.

***Recommendations for the Final EIS*:**

- Update the citation regarding Pinyon jay nesting on habitat edge.
- Include citations for unsuitability of homogenous closed-canopy pinyon-juniper woodland for birds and the Great Basin Bird Observatory radio-telemetry study.

Recreation and Visitor Services

The Draft EIS discusses the affected environment and trends for recreation and visitor services; however, available background information on the amount of large group and commercial recreation within the project area and information summarizing the frequency of special recreation permit denials and levels of compliance are not provided. The EPA believes inclusion of this information in the Final EIS would provide helpful context for the public's understanding of recreational activities that occur within the planning area.

In addition, the 1st, 2nd, 4th, and 5th drivers of recreational change in the planning area are not listed in a manner analogous to the 3rd, which effectively highlights how increased energy development may lead to potential conflicts with recreation. We recommend making these changes to the 1st, 2nd, 4th, and 5th drivers of change to demonstrate the connection between the topic and its potential conflicts with recreation. For example, it could be helpful to evaluate whether technological advances, the 5th driver of change, might lead to an increased visitor presence in remote portions of the project area or heightened publicity of certain locations.

***Recommendations for the Final EIS*:**

- Disclose the amount of large group and commercial recreation within the project area and summarize information on the frequency of special recreation permit denials and levels of compliance.
- Discuss the effects of the 1st, 2nd, 4th, and 5th drivers of change in a manner analogous to the discussion of the 3rd driver of change.

Transportation and Travel Management

Setting a Route Density Standard

The Draft EIS does not contain a specific target to ensure that travel management planning would result in habitat improvement at a scale necessary to reverse GRSG population declines and habitat fragmentation and degradation. The EPA notes that past BLM management and authorizations have resulted in significant habitat fragmentation in the GRSG range. In order to reduce habitat

fragmentation caused by historical uses, it will be necessary to remove existing disturbances. It may be difficult for the BLM field offices, through travel and transportation planning, to appropriately reduce routes without setting a route density standard in this RMPA. The best available science indicates that GRSG need large blocks of un-fragmented habitat with route densities 0.5 to 0.9 mile/per square mile (NTT 2011). Establishing a route density standard in the Final EIS and RMPA would aid in travel management planning and implementation in the future.

> ***Recommendation for the Final EIS and ARMPA*:** Establish a route density standard and include this as a management action in the alternatives table.

Preventing Unauthorized User-Created Routes

Unauthorized user-created routes are a significant issue on BLM lands, and can negatively impact species, riparian areas, water quality, and habitat. To prevent unauthorized user-created routes, further actions may be needed, as described below.

> ***Recommendation for the Final EIS and ARMPA*:** Commit to closing and restoring unauthorized user-created routes routes and improving signage on open and closed routes.

Planning Area Roads Managed by BLM

Although the Draft EIS discloses that most roads in the planning area are not managed by the BLM (p. 3-76), the number and proportion of roads managed by the BLM in the planning area is unclear. Including this information in the Final EIS may help a reader determine the significance of the BLM's planning actions relating to transportation and travel management.

> ***Recommendation for the Final EIS*:** Include an estimate of the number and proportion of roads managed by the BLM in the planning area.

Addressing Vehicular Collisions

Section 4.2 of the Draft EIS discusses the potential impacts of specific BLM management actions and authorized activities on GRSG, and how GRSG are negatively impacted by road noise and tend to avoid paved roads, which may lead to habitat alternation and fragmentation. We also recommend discussing the frequency and likelihood of vehicular collisions within the planning area. The EPA appreciates that the BLM mentions some of these impacts in the Cumulative Impacts discussion (p. 4-232).

> ***Recommendation for the Final EIS*:** Discuss the frequency and likelihood of GRSG vehicular collisions within the planning area.

Conservation and Landscape Health Final Rule

The BLM's Conservation and Landscape Health Rule became effective June 10, 2024. This rule establishes policy to protect the most intact, functioning landscapes; restore degraded habitat and ecosystems; and use science and data as the foundation for management decisions across all plans and programs.[4] In particular, Section 6102.1 requires that the BLM prioritize "[c]onserving landscape intactness when managing compatible uses, especially where development or fragmentation that

[4] Conservation and Landscape Health, 89 FR 40308 (proposed April 3, 2023) (codified June 10, 2024, at 43 CFR 1600, 43 CFR 6100). **https://www.federalregister.gov/documents/2024/05/09/2024-08821/conservation-and-landscape-health**

could permanently impair ecosystem resilience has the potential to occur on public lands." We recommend that the Final EIS describe how the how the alternatives, including the preferred alternative, would align with this rule.

***Recommendations for the Final EIS*:**

- Evaluate the consistency of each alternative with the Conservation and Landscape Health Final Rule.
- Specifically address how the alternatives would prioritize conserving landscape intactness to prevent permanent impairment of ecosystem resilience.

Reporting on Conservation

Due to the varying conservation efforts proposed across the ten states, it will be important to annually report on conservation. We recommend utilizing the U.S. Geological Survey's Conservation Efforts Database due to its abilities to link conservation actions to one or more threats and reporting and accounting for actions at multiple scales.

***Recommendation for the Final EIS*:** Commit to annually reporting on conservation, enhancement and restoration actions taken by BLM through the U.S. Geological Survey's Conservation Efforts Database.

Tracy Stone-Manning, Director
Bureau of Land Management
1849 C St, NW
Washington, DC 20240

Dear Director Stone-Manning,

My great grandfather, William Curtis homesteaded in Wyoming in 1882 and like others of his day, great granddad told stories of seeing and hunting abundant sage-grouse in Sheridan and Johnson counties. Over a century later, in 2019, I retired from the Wyoming Game and Fish Department (WGFD) after a career as a wildlife and sage-grouse biologist. During my career I collected, analyzed and reported Greater Sage-Grouse population and habitat use information, participated in the delineation of sage-grouse Core/Priority habitats, and contributed to management and policy decisions, including several Wyoming Governor's Sage-Grouse Executive Orders. I served as the chair of the WGFD Sage-Grouse Working Group (1997-2018). I also chaired the Western Association of Fish & Wildlife Agencies' (WAFWA) Sage and Columbian Sharp-tailed Grouse Technical Committee (2014-16). I was a member of the Rangewide Interagency Sage-grouse Conservation Team and a member of the U.S. Fish & Wildlife Service/WAFWA Wildfire and Invasive Species Working Group for several years.

My home is very near public lands managed by the BLM. This proximity allows me and my family to use and enjoy these lands, particularly for the wildlife resources they support. I visit public lands multiple times each week, year-round.

Over my nearly 40 years working and recreating in southwest Wyoming and beyond I have gained specific knowledge of and personal interest in how public lands are managed. It is with this background I offer the following comments on the BLM's 2024 Greater Sage-Grouse Draft EIS. I also helped craft and signed a letter previously submitted by a group of 21 scientists with expertise in sage-grouse and the sagebrush biome. My comments below are supplemental to those comments.

- I support efforts to secure the most effective safeguards for these "best of the best" areas which are resistant to impacts like invasive species and resilient in their ability to return to good habitat after an impact such as wildfire. These landscapes are the cornerstones upon which the survival of the sage-grouse depends. Irreplaceable places, such as the "Golden Triangle" in western Wyoming, have such high biological value that these habitats must receive the highest level of conservation.

  Provisions of the Wyoming Sage-Grouse Executive Order (EO), which is largely adhered to by the BLM in Wyoming, can reduce the level of impact associated with oil and gas

development and other anthropogenic impacts to sage-grouse and sagebrush habitat. The greatest "success" of the EO has been the fact that stipulations often render potential development of uncertain resources uneconomical to pursue. Concerning however, is that where development might occur the residual impacts, even with EO stipulations applied, are not insignificant, and could be severe, depending on the location of development. The development thresholds prescribed by the EO allow no more than an **average** (emphasis added) of 1 well pad per 640 acres and 5 percent of the habitat disturbed (e.g. the proportion of the area turned into pads and roads). Averaging means some areas may contain high well pad densities as long as other areas within the analysis area have low well pad densities. This juxtaposition could result in severe impact to large numbers of sage-grouse if the high well pad densities are placed on and around large sage-grouse leks. There are no provisions within the Executive Order that consider the relative numbers of grouse occupying the analysis area. Within priority habitat in Wyoming, areas with large leks (e.g. 100+ strutting males) are regulated no differently than small leks (e.g. <10 strutting males) allowing for disproportionate impacts. As a result of BLM Instruction Memorandum 2018-26, fluid mineral leases were sold on top of the largest remaining sage-grouse leks, not only in Wyoming, but on Earth, in the "Golden Triangle". Subsequent litigation has occurred, but the fact remains that the best sage-grouse habitats are not fully secure from potential impacts of development under current policy.

- If recent reporting (High Country News May 15, 2024 "Federal grazing lands fail their checkup") is accurate in stating that 56.7 million acres of BLM rangeland fail to meet the agency's land health standards, the BLM is failing to achieve objectives that are foundational to the success or failure of this plan. This issue must be clarified and addressed more thoroughly in the final plan.

Thank you for the opportunity to comment. The sagebrush biome is at a critical juncture. Whether or not it can continue to function as an ecosystem is hanging in the balance. The loss of 1.3 million acres of sagebrush habitat per year is unsustainable. Aggressive action must be taken to stem the loss and restore compromised habitat. Actions outlined within the BLM's Plan offer the opportunity to accomplish this task if the final decision is based in science and implemented with commitment and cooperation.

Sincerely,

Tom Christiansen
Green River, WY

NIOBRARA CONSERVATION DISTRICT
PO BOX 659 LUSK WY 82225

June 13, 2024

Greater Sage-grouse Land Use Plan Amendments EIS Comments
ATTN: HQ GRSG RMPA
U.S. Bureau of Land Management - Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101

Submitted via Federal eRulemaking Portal
Portal: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning **(**Federal Register/Vol.89, No. 52/Friday, March 15, 2024/Notices)

Dear Ms. Pat Deibert:

On behalf of the Niobrara Conservation District (NCD), please accept this letter as comments for the Bureau of Land Management's (BLM) Greater Sage-grouse (GrSG) Draft Resource Management Plan Amendment (DRMPA) and Draft Environmental Impact Statement (DEIS). The management of GrSG continues to be of great importance to us and working with federal agencies to pursue a balance between Sage-grouse conservation, multiple use of public lands, energy development and the protection of private property is critical to the long-term health of our county and the State of Wyoming.

NCD has been actively engaged in the GrSG RMPA process, today and historically during the 2015 and 2019 plan amendments. In addition, we have participated in the Governor's Executive Order process including the development of Wyoming Executive Order 2015-4 and 2017-2, and most recently the updated Executive Order 2019-3. The NCD has demonstrated through numerous efforts that we have a vested interest in proactive management of GrSG to prevent a threatened or endangered listing under the Endangered Species Act (ESA).

The Niobrara Conservation District (District) has a broad mandate to assist, promote, and protect public lands and natural resources, soil, water, and wildlife resources, to develop water and to prevent floods, to stabilize the ranching and agriculture industry, to protect the tax base, and to provide for the public safety, health, and welfare of the citizens. The District is charged with conserving, protecting, and developing these resources on all lands within the District and, thus, it is one of the few governmental entities with express authority to address resource issues, in cooperation with private landowners, state, or federal land management agencies on private, state, and federal lands. State law also gives the District broad powers to accomplish these policies and mandates, through research and education, implementation of erosion control, water and range

projects with landowners, development of comprehensive plans, demonstration projects, providing financial and other assistance to landowners, management of flood control projects or lands under cooperative agreements with the U.S., and adoption of rules and ordinances. Both federal and state law authorize intergovernmental coordination and cooperation, which provide a mechanism for the local government to meet its mandate and policies for all lands within Niobrara County. The District is a local governmental subdivision of the state as defined and established by the Wyoming Conservation Districts Law (Wyo. Stat. Title 11, Art. 16). The people of Niobrara County elect the five-member Board of Supervisors to the District during the general election by popular vote. The elected members represent both the rural and urban populations within Niobrara County. The District supervisors are the only locally elected board specifically charged with the responsibility of representing the citizens of Niobrara County on natural resource issues. A conservation district supervisor serves the community voluntarily. The District Board of Supervisors administers and implements projects and programs funded through local, state, federal, and private partnerships. The District, pursuant to the Wyoming Conservation Districts Law, is authorized to develop plans and policy for the District and file said plans in the office of the Niobrara County Clerk (Wyo. Stat. §11-16-122 (iv) and (xvi)). The legislative declarations and policies of the Wyoming State Legislature guide the District's exercise of authority in developing this Plan.

In Wyoming, counties serve as a legal arm of the state entrusted with carrying out statutory and regulatory goals at the local level. Counties operate at the forefront to ensure our communities are economically vibrant, safe, and healthy places to live and work. Wyoming counties serve as partners and co-regulators of the 18.4 million acres of BLM surface lands and 42.9 million acres of federal mineral estate that fall within our jurisdictional boundaries and uniquely contain varying percentages of federal, state, and private land, which need thoughtful management. Specifically, Niobrara County covers 2,614 square miles or 1,672,960 acres and is the 16th largest county in Wyoming. Approximately 82% of the land is privately owned, 8% of the land is owned by the federal government, and 10% of the land is owned by the State. Most of the federal land is administered by the Newcastle BLM Field Office but a small portion is administered by the USFS as the Thunder Basin National Grassland (TBNG).

Furthermore, as co-regulators, Niobrara County Commissioners and Niobrara Conservation District have prepared a comprehensive land use and/or zoning plans and/or natural resource plan to serve as the basis for communicating and coordinating with the federal government and its agencies on land and natural resource management issues. Wyo. Stat. § 18-5-208(b). Communication, coordination, and collaboration with the BLM is vital, especially where significant BLM land and minerals exists, and management decisions can significantly impact the regulatory framework, customs, culture, and socioeconomics of our counties. Conservation Districts have far-ranging and important responsibilities to their constituents, described by state statute as protecting their "health, safety and welfare" (Wyo. Stat. § 11-16-103). That responsibility includes specifically interacting with federal agencies on all federal issues impacting the local community and counties.

Niobrara County's culture is a low population density and a high quality of life followed closely by self-sustaining environmental quality and diversity in use of the natural resources. Niobrara

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County's custom is resolutely independent with strong family values, quality education, unified and community-driven when facing adversity and mutual respect for each individual. Niobrara County has placed paramount importance on the continued use of the natural resources (on both private and public lands) for the production of food and fiber when defining economic and community stability. The vast open spaces in our locale are vital to the unlimited recreational and tourism opportunities. Local retail and family-type businesses, railroads, oil and gas, industries, prison, and government agencies also contribute to the economic and community stability.

Rural counties' socioeconomic well-being, health, safety, and culture are impacted by the management of the surrounding federal and public lands. To give locally elected governments the strongest voice possible during "government-to-government" interactions, local governments can formally adopt "local land use plans" (LUPs) or NRMPs. These plans establish policy regarding the use and management of federal lands in local governments' jurisdiction and can influence the development and implementation of federal policies, programs, and decision-making that affect local communities. NRMPs are intended to help protect the local citizens' use of, and access to, federally administered lands and resources and to ensure the socioeconomic wellbeing, culture, and customs of a local community are adequately considered in federal decisions (Budd-Falen, 2018).

As partners, Counties work diligently to support the work of our federal land managers to overcome shared challenges and achieve mutual goals. Our counties actively participate with Wyoming BLM field offices and the Wyoming State BLM office on National Environmental Policy Act (NEPA) projects, trainings and presentations, and special initiatives. This proposed Plan Amendment is no exception, as Wyoming counties participated as cooperating agencies in BLM meetings and provided administrative draft comments, where allowed.

In response to this DEIS, NCD submits the following detailed comments for BLM's consideration specific to this plan amendment:

I. General

- State of Wyoming – NCD endorses, and incorporates by reference, comments submitted by the State of Wyoming.

- Wyoming County Commissioners NCD endorses, and incorporates by reference, comments submitted by WCCA because we have a joint plan with the commissioners.

II. Support for the Wyoming GrSG Executive Order 2019-3 (EO) and State Alternative

NCD has gone on record numerous times, strongly supporting BLM's alignment with the Wyoming EO to the greatest extent possible. NCD believes the steps taken by the BLM in the past to align with the EO is critical to successful population and habitat management. Further,

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coordinating and combining resources between the state, local governments and federal agencies ensures the success of long-term management approaches that benefit the species.

The creation of the Sage-grouse Implementation Team (SGIT), an on-going process occurring between a cross section of stakeholders representing a multi-jurisdictional, cross-governmental and citizen-inclusive collaborative working group, focused on developing a satisfactory management strategy to protect GrSG and its habitat. The regulatory framework ultimately developed by SGIT and incorporated into the Wyoming EO resulted in the support of the United States Fish and Wildlife Service (USFWS) as a regulatory mechanism that would in fact protect long-term viability of Sage-grouse habitat and Sage-grouse populations; thereby, avoiding a listing under the ESA.

Wyoming has worked diligently to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. Many of the issues BLM is now readdressing in this latest series of NEPA analysis includes: Priority Habitat Management Area (PHMA) mapping, habitat objectives, approaches to minimizing surface disturbance in PHMA, effects of livestock grazing, mitigation strategies including compensatory mitigation, mitigation recommendations for fluid mineral development within PHMA and General Habitat Management Area (GHMA), wild horse and burro management, adaptive management prescriptions and strategies for short-and-long term monitoring, which are all addressed in depth by the Wyoming EO.

BLM should continue to join Wyoming in supporting this EO and the regulatory framework as being the most effective for protecting the species and its habitat and allowing for a flexible strategy addressing changing conditions in a timely manner.

To this point, the State of Wyoming submitted a proposed State Alternative to be analyzed in this DEIS, which provided consistency with the EO. BLM failed to incorporate that proposed state alternative in the analysis as stating it was submitted to BLM too late in the process to be included as a stand-alone alternative. NCD strongly encourages BLM to include or acknowledge the State's Alternative in the Final EIS with a sufficient explanation as to why it was not addressed in the analysis to date.

III. Cooperating Agency Process

The cooperating agency process was not without disagreement or frustration as our opportunity to engage with the federal agency, as outlined by the Counsel of Environmental Quality's (CEQ) NEPA regulations and was written into our MOUs, was ignored by the BLM. When these conflicts arose, Wyoming counties did everything in our power, and in accordance with our MOUs, to raise concerns expeditiously to resolve issues, as expressed in our candid conversations and frank letters.

While the DRMPA expresses numerous successes for cooperation throughout the process, there were certainly places that could have been improved. We also realize that the BLM is generically

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referred to, however, it must be clarified that this process was not run by the Wyoming state office but rather BLM Headquarters. This enlarged scale may be partly to blame for process failures during the cooperating agency process.

Unfortunately, Wyoming counties were powerless in directing how the BLM ran its cooperating agency process and meaningful opportunities for participation in the amendment process were far and few between. In an attempt to remedy this problem, Wyoming counties verbally requested improvements and sent numerous letters asking the BLM to improve the cooperating agency process and work in good faith with cooperators.

Our first letter in June of 2023 asked the BLM to develop a regular schedule of meetings (previous meetings were sprung on cooperators with minimal notice), to provide documents to review before the meetings, and to have the individuals at the BLM actually in charge of drafting the documents in the meetings. BLM did set up regular meetings and invited members of BLM HQ to participate, but documents were not shared with cooperators in advance of ,or after, the meetings.

Our second letter in August of 2023 requested the BLM follow its MOU which detailed how cooperators would be assisting in the determination of the purpose and need, development of the alternatives and management prescriptions, along with an estimation of effects of implementing each alternative. Up to this point, cooperators had only been used as editors of small portions of the management prescription tables (never impact analysis), without having the benefit of previously discussing the management prescriptions in a cooperating agency meeting.

The Western Governors' Association (WGA) wrote a similar letter to the BLM outlining concerns that it had with the mapping process, the lack of inclusion of state plans as separate alternatives, and inconsistent information shared to members of its taskforce. This letter prompted the BLM to engage the WGA Taskforce in cooperating agency meetings. While a positive development for Taskforce members, counties serving as cooperators were not invited. Additionally, it became clear that the BLM was treating the Taskforce differently as it began to share many of the documents requested by counties with the Taskforce, albeit with a disclaimer "that these documents not be shared beyond the SG Task Force."

Our third letter in December of 2023 expressed our exasperation of being given an administrative draft, most of which we had never seen or discussed, to review over the Christmas Holiday. This was the first time that any information concerning the environmental or socio-economic impacts from the range of alternatives was provided to cooperators. Unfortunately, the BLM administrative draft was largely incomplete, inconsistent, and had several sections that were simply incorrect. Specifically, it lacked impact analysis for an entire alternative, it presented erroneous acreage figures and tables for Wyoming, and was woefully inaccurate in its description of socioeconomic impacts from fluid mineral leasing and development.

The BLM acknowledged these errors and promised Wyoming cooperating counties a second review of an updated draft of the socioeconomic sections before the release of the public draft. The

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BLM failed to uphold this promise and cooperators were never shown updated socioeconomic information before the draft went public.

IV. Consistency with Niobrara County Natural Resource Management Plans – August 03, 2021 comprehensive land use and/or zoning plans

The Federal Land Policy and Management Act (FLPMA), which governs the BLM, provides detailed requirements for "coordination" and "consistency" with local government land use plans. FLPMA states:

> To the extent practical, the BLM must stay apprised of local land use plans. The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration. To the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans. The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. 43 U.S.C. § 1712(c)(9).

There is no indication in the DEIS that BLM knew about or gave consideration to local land use plans as required by FLMPA. Nowhere in the DRMPA does the BLM even quantify the local plans within the amendment area, not to mention, assure those plans are given consideration. At a minimum, the BLM should include a list of the local land use plans that are within the amendment boundary.

FLPMA also requires that within the environmental consequences section of an EIS, the BLM include a discussion of all "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(a)(5). Further, where any inconsistency exists, the BLM is required to provide a statement describing "the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d). An RMP may be inconsistent with local plans only where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and regulations applicable to public lands. *Id.*; 43 C.F.R. § 1610.3-2(a).

There is no discussion of possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. Not only does this discussion concern local land use plans, but the BLM must also discuss the conflicts with its own mandates and laws. Specifically, it should discuss the obvious conflicts present in Alternative 3 with its multiple use and sustained yield mandate.

The BLM seems to suggest it does not need to do additional consistency review when it states on page ES-12: "Some counties identified their preference for management actions from one

alternative or another. It is important to note that these preferences did not specifically cite state or NCD plan, program, or policy language."

This statement is false and should be removed from the DRMPA. Counties and the State of Wyoming both provided verbal and written comments and identified preferences of management actions based on the State's EO and county plans, programs, and policies. To the extent that additional citation or specificity was desired, the BLM should have asked for it and provided an opportunity for cooperators to provide it.

The DEIS rightfully acknowledges on page 1-12 that "BLM RMPs be consistent with officially approved or adopted resource-related plans of other Federal, State, local, and Tribal governments and policies and programs contained therein, to the extent that they are consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands." However, the DEIS does not address inconsistencies with local plans but instead, claims that the BLM will identify inconsistencies in the Final EIS after receiving comments from state and local government agencies.

NCD believes that the BLM's approach of waiting until the final stage to address inconsistencies in the EIS is flawed. This delay prevents state and local government agencies from providing input during the drafting phase, which could have led to substantive comments that might alter the project's components and subsequent analyses. A federal agency should not address consistency solely by responding to concerns raised through comments. Instead, the BLM should have taken an active approach in identifying inconsistencies and addressing them in the DEIS. It is clear that the process by which BLM included a thorough consistency review of the NCD local natural resource plan fell far short of adequate and examples of specific inconsistencies will be detailed in this letter below.

IV. Disturbance Caps

NCD recognizes the importance and necessity of establishing appropriate disturbance caps to ensure that disturbance to an area does not exceed tolerance levels of the GrSG. The Wyoming State Legislature, federal, state and local agencies, industries, conservation organizations, and landowners have dedicated significant time and resources to conserve GrSG populations in the State. We have shown the capacity and authority to protect and manage the species and its habitats on all lands by establishing oversight mechanisms and implementing protection measures, including developing a disturbance cap using the Density Disturbance Calculation Tool (DDCT). The DDCT establishes a disturbance cap of 5% for suitable GrSG habitat per an average of 640 acres over the entire DDCT assessment area.

To align with the State's EO for GrSG management strategies and to facilitate prompt calculations of disturbance areas, NCD suggests that Wyoming be exempt from the 3% HAF fine scale disturbance cap, regardless of the chosen alternative under the EIS. While the BLM would still be

able to gather and quantify whatever disturbance data it chooses, the 3% HAF fine scale disturbance cap should not be another disturbance calculator for permit authorization.

Currently, the disturbance levels in Wyoming, including those from fire and agriculture, are well below the 3% cap, making the requirement to meet this cap largely redundant and an inefficient use of time. Moreover, since the 3% HAF fine scale disturbance cap overlooks disturbances from fire and agriculture, which the DDCT includes, utilizing the DDCT for calculating the disturbance cap offers a more inclusive and simpler approach.

As stated earlier, NCD supports the Wyoming EO including the utilization of the 5% surface disturbance cap along with the DDCT process, which has proven to be a sufficient management tool of surface disturbing activity within PHMA (core) habitat.

Additionally, the introduction of two disturbance caps could eventually lead to scenarios where one cap is met but the other is exceeded. The DEIS lacks clarity on how the BLM would manage such situations, potentially opening the door to disputes and outside legal challenges. NCD is concerned that any perceived discrepancy between the two disturbance calculations could fuel litigation from parties with the intent on halting the permit process. Clarity is key.

If the BLM proceeds with dual disturbance caps, NCD would expect the agency to honor its verbal commitment made at the SGIT public meeting on May 29th, 2024, to engage with the State of Wyoming when discrepancies between disturbance caps arise.

Ultimately, by adhering to the established DDCT 5% disturbance cap, the BLM would not only effectively safeguard the habitat of the GrSG from excessive disturbance but also circumvent unnecessary project delays that could stem from additional coordination and potential litigation.

V. Grazing Management Objectives

Agriculture and livestock production in the county is necessary for the economy, its tax base, and the livelihood of the ranching/farming businesses and related industries. It is also vital to the well-being and continued health of natural resources on federal, state, and private lands. The range production of livestock and livestock grazing are management tools that are used to maintain and enhance the rangeland resource, which benefits watersheds, wildlife, water quality, and recreation, as well as providing needed forage for sustaining livestock production and wildlife habitat. Livestock grazing has been a major industry in Niobrara County since early settlement and continues to be a vital part of the custom and culture of the county as well as an economic driver.

3.5.3 Rangeland and Grassland Management Resource Management Objectives:
A. Rangelands and grasslands within Niobrara County are managed under multiple use principles that promote grazing, fuels management, recreation, wildlife habitat, and benefits the economy, custom, and culture of Niobrara County.

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B. Rangeland and grassland ecosystems within Niobrara County are maintained to ensure healthy and vibrant watersheds for current and future generations and to sustain the stability of ranching and agriculture.
C. A sustainable and continuous supply of forage, timber, wood products and biofuels, firewood, wildlife, fisheries, recreation, and water supplies utilizing multiple uses on public rangelands and grasslands is supported and promoted by Niobrara County.
D. Rangeland vegetation is enhanced by actively reversing the colonization and encroachment of rangelands by juniper and weed infestations.
E. Existing uses on rangelands and grasslands within Niobrara County continue and are enhanced.

2.5.4 Rangeland and Grassland Priority Statements:
1. Rangeland and grassland management on public lands shall adhere to the Multiple Use Sustained Yield Act, as well as the National Forest Management Act, National Environmental Policy Act, and the Endangered Species Act.
2. Niobrara County and the Niobrara Conservation District encourage federal agency policies that support and allow for the timber industry's continued economic benefit to the citizens of Niobrara County.
3. The Thunder Basin National Grassland shall be managed to serve its primary purpose of creating a sustainable forage cover that would protect the fragile soil and promoting grazing.
4. Access to rangeland and grassland products on public lands within Niobrara County shall be ongoing and access to these sites shall be through an open roads and cross-country travel system.
5. Federal agencies should coordinate with Niobrara County on vegetative treatments, prescribed burns, special management decisions on public lands in Niobrara County.
6. Niobrara County and Niobrara Conservation District encourage active management of rangeland and grassland resources on public lands to reduce invasion of unwanted species.
7. Federal agencies should support weed management and mitigation on rangeland and grassland federal lands within Niobrara County and support the creation and maintenance of Play, Clean, Go programs.
8. Federal agencies should support salvage harvest when necessary due to insect/disease epidemic, blowdown, or post-fire situations using appropriate categorical exclusions.
9. Niobrara County supports federal Payments in Lieu of Taxes to Niobrara County.
10.Federal agencies should notify and coordinate rangeland and grassland management projects with Niobrara County, Conservation District, state and local agencies, and private landowners to improve the scale and scope of each project.
11. Federal agencies should protect environmental capital assets reducing fuel loads on rangeland and grassland areas within Niobrara County.
12. Federal agencies should maintain and restore watershed health by demonstrating active rangeland and grassland management.
13. Federal land managers should continue to plant and develop a wide variety of trees, shrubs, and seedlings to the vegetation community for windbreaks and shelterbelts for aesthetic, wildlife, and agricultural value in coordination with the Conservation District.
14. Niobrara County requests to be involved in the designation or management decisions of areas that may require single-use or restrictive use.

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15. Federal agencies should support excluding the maximum area of land possible from single-use or restrictive-use designations, so that excluded land is available for active and sound management.
16. Federal agencies should support site-specific management decisions based on sound science, compliance with the 1997 Wyoming Standards for Healthy Public Rangelands, and Best Management Practices.
17. Federal agencies should ensure that rangeland health assessments identify all the causal factors when there is a failure to meet the 1997 Wyoming Standards for Healthy Rangelands and that livestock grazing uses are not reduced to compensate for or mitigate the impacts of other causal factors.
18. Niobrara County and Niobrara Conservation District support cooperation with public land managers, local organizations, boards, and governments on the importance of public lands to local infrastructure maintenance.
19. Federal agencies should explore and use vegetation management and harvest methods, where applicable, that enhance wildlife habitat through vigorous new growth and a natural mosaic that reduces fuel loads.
20. Federal agencies should coordinate with Niobrara County and Niobrara Conservation District in the development of plans to reduce fuel loads in forest, rangeland, and grassland areas that are already insect-infested and manage the remaining forested areas to minimize further infestation.
21. Federal agencies should support and work to identify range management objectives based on site potential, climate, and land uses. 22. Niobrara County does not support President Biden's 30x30 Plan and any coercive management decisions aimed to take private or public land out of production will harm the custom and culture of the County and should therefore be avoided.

In addition, NCD encourages BLM to be consistent with the BLM Land Health Standards (LHS) and specifically Standard 4 which addresses special status species management (SSS). Furthermore, the management prescriptions pertaining to livestock grazing identified in Chapter 2 (page 2-104, Table 2-12) of the DEIS should be made consistent in Chapter 4 and throughout the entirety of the document.

Specific to Adaptive Management (AM) and grazing in Alternatives 3-6, BLM has removed livestock grazing from the narrative and embedded it in the alternatives table in Chapter 2. The language in the alternatives table for AM is not consistent with current BLM rules and regulations, nor is it consistent with the Alternatives for Livestock Grazing in Chapter 2.

BLM should allow for grazing to be included in the AM process and be consistent with existing alternative language. BLM uses the terms "causal" and "contributing factors" incorrectly. Livestock grazing must be identified as a significant causal factor for LHS SSS before any modifications occur to livestock grazing permits or leases. NCD requests that the following language be considered in the alternatives: Specific to GrSG habitat, manage livestock grazing in a manner that 1) meets or makes progress toward meeting the Land Health Standard for special status species, and applies the guideline that addresses "restoring, maintaining, or enhancing habitats of...special status species to promote their conservation." (43 CFR Part 4180.2(e)(9))

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Moreover, under Alternative 3, BLM analyzed for a "no grazing" alternative for all states stating "…Because PHMA would be unavailable for livestock grazing, no overarching livestock grazing objective would be needed." This alternative is economically and technically unfeasible to implement as it is in violation of the Taylor Grazing Act. The most appropriate action, as identified by the CEQ NEPA Regulations, would have been for BLM to consider it and eliminate it from further analysis as it does not meet the standard of alternatives that should be analyzed as "technically or economically" feasible. NCD is strongly opposed to a "no grazing alternative" in any form.

Regarding fencing, NCD generally supports wildlife friendly fencing; however, BLM must coordinate with the applicable grazing lessees should the removal of fencing be considered as those decisions could impact grazing allotments and management of the resource. Finally, any changes in grazing management should consider effects to the adjoining private or state lands as this could impact grazing management practices.

As demonstrated, agriculture production and livestock grazing are significant for the Counties. Not only do they provide an important tax base, the industry is a historical part of the local custom and culture. In the preferred alternative, NCD supports the maximum amount of animal unit months (AUMs) being available for livestock grazing on BLM lands in PHMA and GHMA.

VI. Mitigation

Wyoming remains committed to working with its federal partners to develop a mitigation strategy that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. While BLM must adhere to its mitigation hierarchy (avoid, minimize, rectify, reduce, compensate), NCD encourages the federal agency to work with the State of Wyoming by following the well-founded principles in the EO regarding adaptive management and the mitigation framework which includes steps for requiring compensatory mitigation. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner and provides regulatory certainty for all parties involved.

VII. Private Property Rights

The Niobrara County Commissioners and District believe that the American concept of government of the people, by the people, and for the people is best served when government affairs are conducted as close to the people as possible (i.e., at the local government level). We find it desirable to address the use and management of these important resources, especially rangelands, soil, and water conservation, within the political jurisdiction of the District and the County as the heart of its comprehensive planning efforts. The Commissioners and District understand one goal of the County's citizens and, therefore, its government has been the continuation of a lifestyle, which assures the quiet enjoyment of private property rights and property interest and provides the highest degree of protection for these rights. Property rights and interests are important to the

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people living and working in this remote, rugged county, which is the least populated county in the least populated state. Many people who live in Niobrara County rely on the land and its productive use. Private ownership and the incentives provided by private ownership are driving forces that support the livelihood of many Niobrara County citizens.

The U.S. Constitution created a form of government characterized by:

1. Limited powers granted to the federal government, with all un-enumerated powers being reserved to the respective states.

2. Separation of those limited powers into legislative, judicial, and executive branches.

3. Creation of a process where the branches act to check and balance the power of the other branches.

4. Guarantee rights of due process and just compensation when private property is taken for public use.

5. Grant of authority to Congress to make laws governing federal property.

Resource Management Objectives (Private Property Rights):

A. The fundamental rights of mankind as enumerated in the Declaration of Independence, the constitutional rights of citizens as set forth in the U.S. Constitution and Bill of Rights, and the Wyoming Constitution are reaffirmed, and the limited nature of government as intended by the nation's founding fathers is acknowledged.

B. Private property and interests in private property are protected and the continuation of private economic pursuits is promoted within Niobrara County.

C. The principles of due process are applied and followed at all levels of government within Niobrara County.

1.5.2 Priority Statements (Private Property Rights):

1. Federal agencies should respect private property rights and consider the effects of policies, regulations, and decisions on these rights.

2. Federal agencies shall conduct a takings implication assessment pursuant to Executive Order 126301 [Addendum Tab No. 47 at 236] for each federal action and should allow Niobrara County to provide comments regarding said assessment.

3. Federal agencies should recognize that the protection and preservation of privately owned land are desirable and necessary in Niobrara County.

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4. Federal agencies should coordinate with Niobrara County to facilitate the opportunity of County citizens to be heard in the appropriate proceeding.

5. Federal agencies should promote the disclosure and public education of proposed actions, regulations, policies, and land use plan decisions that affect Niobrara County.

6. Federal agencies should avoid conflicts of interest in all decisions and disclose to the public when a possible conflict of interest exists.

7. Federal agencies should work with Niobrara County to ensure due process is given in all situations.

As stated earlier, Niobrara County is rich in federal resources as our lands are comprised of approximately 7.4% *federal surface* and an estimated 45% *federal minerals*. Farming, ranching, energy development, tourism and recreation contribute heavily to the heritage of the County. Rangeland used by livestock and agricultural producers continues to be the dominant land use and federal agencies should consider the effects their decisions will have on neighboring private lands.

Furthermore, access to, or restrictions from, crossing federal, state, or county managed lands should not entail encumbrances or constraints on private property. Private property rights are the cornerstone of our county and must be protected to ensure that our continued customs and culture remain intact. When an agency decision or proposed action will have a negative impact to the current use of neighboring private lands, that federal undertaking may not be supported by the County.

NCD is particularly concerned about the failure of the DRMPA from analyzing the effects on neighboring state and private lands in the analysis area. Whether described as adjacency effects or cumulative effects, in a state where the BLM manages approximately 18 million surface acres and 41 million subsurface acers (66% of the state), there are substantial impacts to private and state lands across the decision area.

Management and ownership patterns lack uniformity creating a complex and interwoven mix of state, private, and federal minerals that are often "coproduced." The scale of coproduction can vary in degree and can be described in several ways. First, oil and gas can be coproduced by an individual wellbore that crosses through and produces the varying mineral estates. Second, oil and gas can be coproduced inside a drilling and spacing unit, where specific production is pro-rated to the percent of ownership in the drilling area. Finally, oil and gas can be coproduced across the entirety of a company's development play.

Oil and gas companies, like any other enterprise, must take into account risk/reward, scalability for cost saving, future development potential, infrastructure needs, and regulatory regimes. Operators prioritize areas for development where they can maximize returns and reduce risks. In the current phase of development in Wyoming's Powder River Basin, operators have large swaths of development to minimize risks, provide operational flexibility, and cost share infrastructure.

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Even where a wellbore doesn't penetrate federal minerals in a particular drilling and spacing unit, gathering lines, pipelines, transmission lines, and roads to get product to the market inevitably run into federal management at some juncture. Therefore, ROW and surface occupancy restrictions have significant implications for private and state lands and minerals.

This analysis needs to be included in DRMPA. The BLM should acknowledge and analyze the cumulative effects of restrictions on the socioeconomics of our communities. The BLM's socioeconomic analysis should describe the human interests and values shaping public lands management, identifying effects of proposed actions on communities and economies, and promote the economic and social sustainability of communities near public lands.

VIII. Adaptive Management

Wyoming has worked diligently with its federal partners (BLM and USFWS) to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner.

Under Wyoming Statute § 23-1-103, "…all wildlife in Wyoming is the property of the state…" and the Wyoming Game and Fish Department (WGFD) has the legal responsibility for carrying out the purposes of this act. Using the best available science in the Adaptive Management process is necessary to continue long-term healthy populations of GrSG. Recognizing the WGFDs expertise, the State's Adaptive Management strategy places the responsibility of conducting annual population data squarely with the state agency. It is imperative that BLM recognize the WGFDs authority and expertise in this process. The NCD implores BLM to defer to the WGFD regarding any data collection or management decisions that pertain to the population trend analysis of GrSG within the boundaries of Wyoming.

X. Lack of Need for ACECs

The WCCA conducted a consistency review on a statewide basis of the DEIS alternatives in relation to ACECs and county natural resource plans, which is summarized in the attached table. In addition to the consistency table, the text below details the concerns regarding the BLM's inadequate and untimely consistency review and the unnecessary designation of ACECs in areas with existing and adequate PHMA designations to manage for and protect GrSG.

An ACEC is defined as "areas within the public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a).

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A potential ACEC must satisfy a three-part test before it may be designated. First, it must have "relevance," meaning it possesses "a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard." 43 C.F.R. § 1610.7-2(a)(l). Second, it must also have "importance," meaning the relevant values identified in the first step must have "substantial significance and values." 43 C.F.R. § 1610.7-2(a)(2); see also BLM Manual 1613, Section 1 l.B. For the relevance values to meet the "importance" threshold, the area must have "more than locally significant qualities ... compared to any similar resource," have qualities that make it fragile, rare, or irreplaceable, or been recognized as warranting protection to satisfy national priority concerns. BLM Manual 1613, Section 11.B.1. Third, the nominated area must require "special management" "to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish, wildlife, and plant resources, or other natural system or processes." 43 U.S.C. § 1702(a).

Certainly, ACECs can play a role in conservation and special management of historic, cultural, scenic, fish and wildlife resources. However, the BLM has not demonstrated how the addition of the proposed ACECs under Alternative 3 of the DEIS will improve Greater Sage-grouse populations and habitat more effectively than Priority Habitat Management Areas (PHMAs). Under Alternative 3, the DEIS states that the ACECs would be managed similarly to PHMAs, without additional management prescriptions. NCD strongly feels that the designation of ACECs under Alternative 3 are unnecessary given that they will be managed exactly the same as PHMAs. The BLM fails to consider how GrSG populations and habitat are already protected under existing management actions and will be further protected by the proposed management actions under Alternatives 3 of the DEIS. A significant example of this failure is the BLM's attempt to layer ACEC designations on top of existing ACECs like in Fremont and Sublette Counties.

Furthermore, ACEC designations could allow for excessive regulatory authority in the future for areas that are otherwise considered appropriate for PHMA management. Unnecessary designation opens the door for further impediments to multiple use practices.

The Niobrara County NRMP states the following:

3.3.3 Special Designation and Management Area Resource Management Objectives:
A. Designation and management of special designation or management lands are coordinated with Niobrara County and adjacent landowners and allow for multiple use.
B. No new special designation or management areas are created in Niobrara County without approval from the County and the Niobrara Conservation District.
C. Visual resources are protected while maintaining economic stability and underlying land use allocations in Niobrara County.
D. Private land uses, state lands rights, and federal land use allocations are protected by adjusting Visual Resource Management classifications to be consistent with the land uses.
E. Wild and Scenic River proposals are evaluated to determine the impact on water rights and the ability to utilize water rights in the future.

3.3.4 Special Designation and Management Area Priority Statements:

1. Federal agencies shall consult and coordinate with Niobrara County as early as possible when considering the designation of new special designation areas.
2. Any proposed special management area designation shall undergo analysis of the impact on Niobrara County's custom, culture, and economy.
3. Federal management of special designation areas shall be coordinated with Niobrara County and be consistent to the maximum degree with the Niobrara County Natural Resource Management Plan.
4. Federal agencies should support the use of various application methods of herbicides to control noxious weeds in special designation and management areas as allowable.
5. Federal agencies should promptly release and manage for multiple use, any area under consideration for wilderness should Congress recommend not to designate said area as Wilderness.
6. Niobrara County does not support future designations of Wild and Scenic Rivers and any proposed designation shall be coordinated with the County and District and undergo analysis of the impact on Niobrara County's economy.
7. Niobrara does not support the designation, creation, or construction of new special designation areas in the county that could limit current uses on federal lands.
8. All agencies should abide by the legal requirements and qualifications set forth by the Wild and Scenic Rivers Act, including those providing for the continuation of existing uses, privileges, and contracts for designated rivers in, adjacent to, or affecting Niobrara County.
9. Niobrara County and federal agencies should work closely to ensure that existing and future water development opportunities are protected if there is a proposed Wild and Scenic River designation in the County.
10. Any unsuitable rivers should be removed from Wild and Scenic River consideration at the earliest opportunity. State and federal planning actions that affect the visual resource and Visual Resource Management classifications that affect land uses should be coordinated with Niobrara County and District.
11. State and federal planning actions that affect the visual resource and Visual Resource Management classifications that affect land uses should be coordinated with Niobrara County and District.
12. Visual Resource Management classifications that will impair or impede land use on private and state lands should not be designated within Niobrara County.
13. Visual Resource Management classifications should not be used when they undercut the federal land use allocation, including grazing permits/leases, communication/internet services, special use permits, and oil and gas leases.
14. On-the-ground mapping of the roads, fences, rangeland improvements, and any other anthropogenic influence in lands under consideration for lands with wilderness characteristics or wilderness study area designations should occur to ensure accurate representations of the area.
15. Economic and environmental cumulative impacts analysis should be conducted for all existing and proposed designations of any specially designated areas before any new areas are designated.
16. Niobrara County should be notified at the earliest possible time and allowed to participate as a cooperating agency on future designations of any action to analyze any current or proposed special land use designation.

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NCD strongly opposes the designation of any Sage-grouse ACECs in Wyoming. As discussed earlier in these comments, we have worked diligently as a state to develop a framework that effectively manages for GrSG populations and its habitat and no new ACEC designations are warranted nor will they provide any additional protections not already in place.

XI. Fluid Mineral Development and Leasing Objective

Likely the most substantial direct impact to local government revenue in Wyoming is the management prescription for oil and gas development. Consequently, it is vital to correctly capture existing development and the Reasonably Foreseeable Development Scenario (RFDs). The RFD is even more important to get correct when it is comparing the potential impacts from wildly inconsistent alternatives. If poor or incorrect data is utilized to develop the RFD, then the RFD and resulting socioeconomic analysis will be flawed.

Oil and gas operations occur on private, state, and federal land ownership within Niobrara County. These resources provide economic benefits and impacts for the citizens of Niobrara County and the State of Wyoming. The County recognizes that effective development of its abundant mineral resources is necessary to the economic well-being of the county, the state, and the nation. Energy and mineral resource extraction is also consistent with the local history, customs, and culture. Wyoming's legacy as a major energy producer continues today. Be it coal, oil, natural gas, or wind, Wyoming has energy reserves in abundance. Wyoming sits on more than 919 million barrels of oil, 37 trillion cubic feet of natural gas, and 65 billion short tons of recoverable coal. As a result, Wyoming serves a critical role in domestic energy production and supplies more energy to the nation than any other state. (Nicholas & Lubnau, 2014)

Certain portions of the BLM's description and analysis of existing oil and gas could be improved. For example, on 12-38 the BLM reports 9,127 wells have been "drilled" in Wyoming between 2013 and 2023. However, this figure includes workovers and wells that were never completed, which may capture wells that were never actually "drilled." The section properly includes data from the Wyoming Oil and Gas Conservation Commission, which reflects a total of 6,455 unique well spuds in Wyoming between 2013 and 2023. However, the fact that the state's number is 30% less than the BLM's number reflects a poor attempt to gather and clean-up the data for analysis.

On page 12-39, the DRMPA states that 24% of the HMAs in Wyoming are under an existing authorized lease. Additional data that should have been reflected in the DRMPA and clarified in this section is the number of leased acreage currently under litigation in Wyoming. Without including litigated leases in Table 35, it is misleading to members of the public that equate "authorized" as available for development.

In order to understand whether the RFD is truly reasonable there should be a greater description of what was utilized for inputs and variables. Table 35 in Appendix 12 would benefit from a better

description of the "source" of the data provided in the table. In addition, there needs to be additional description of the table to help clarify whether these projected wells are federal surface and minerals, private/state surface and federal minerals, or mixed minerals and surface, etc.

The "Projected Production by Alternative in the Decision Area" needs to be amended to more accurately reflect the decline curves associated with modern horizontal development in Wyoming. Without any written description or justification, the projection utilizes a record production year in Wyoming as its basis for production over the next 20 years. In other words, the current projections do not consider decline curves of existing and new wells but keep historic production levels constant. However, it must be noted that the only way to maintain that statewide production level as production declines from existing wells is to drill and produce new wells.

The problem with maintaining existing production as a constant in the RFD is that it artificially reduces the negative economic impacts associated with alternatives 3 and 4 reduced projected well development. This is because the weight given to new wells is significantly reduced by the artificial base production of the existing wells.

Under Alternative 3 only 4,284 wells are expected to be drilled in the next 20 years. This is compared to Alternative 1 that projects 14,450 wells drilled in the same period of time. Although alternative 3 projects over 10,000 less wells are drilled in 20 years it only reduces the production of oil by roughly 224,000,000 barrels and gas by 4,600,000,000 mcf of gas.

Taxes derived from oil and gas development in Wyoming constitutes a significant portion of state and county revenue used to pay for public education and essential services, including roads, fire protection, emergency medical services, courthouses, libraries, landfills, hospitals, law enforcement, airports, recreation, and senior citizen centers. In Niobrara County, oil and gas revenues are $45,209,921 making up 27.4% of our operational budget.

Oil and gas companies operating in Wyoming are assessed property (ad valorem) taxes by counties and severance taxes by the state. Although they are called "taxes" both are more akin to a royalty because production is taxed regardless of whether an operator makes a profit. Property taxes on oil and gas vary by county and range from 6-7.3% calculated by the gross revenue of the previous year's production and the value of tangible equipment and improvements. Severance taxes are calculated at 6% of gross revenue in the same manner as royalty taxes (gross revenue minus transportation and gas processing cost). Federal Royalties are also deducted from the gross revenue for the purpose of calculating severance taxes.

Property taxes on oil and gas account for over 40% of the total property taxes levied by counties in Wyoming. In 2020, the property taxes collected by counties exceeded $600 million. Additionally, severance taxes collected by the state in 2022 topped $275 million. When adding in federal lease revenues, federal and state royalties, sale and use taxes, and conservation taxes, the industry contributed $1.23 billion in taxes to state and local governments.

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Oil and gas development is also subject to sales and use taxes. A decrease in assessed valuation will affect all county and special district operations including essential services like road and bridge construction and maintenance, investment in IT technology and cyber security, economic diversification investment (water, sewer and streets), fire equipment and personal, and daily operations.

As noted on the Petroleum Association of Wyoming (PAW) website, Wyoming ranked 8th in production of both crude oil and natural gas in 2022 nationally. Further, Wyoming ranked the 2nd largest producer of both oil and natural gas on federal lands, making the state disproportionally affected by national policy changes. According to a 2023 study released by the American Petroleum Institute, in 2021 the oil and natural gas had the following impacts on the Wyoming economy: 58,780 total jobs and $5.7 Billion in labor income. Niobrara NRMP states the following:

4.5.1.3 Oil and Gas Resource Management Objectives:

A. Oil and gas extraction is managed in a responsible way that promotes Niobrara County's economic viability along with the health of both ecosystems and citizens of the County.

B. Niobrara County and Niobrara Conservation District are given meaningful participation in the permitting process for all extraction activities in the area.

C. Suitable oil and gas exploration and development occurs in Niobrara County while conserving rangeland, soil, fish and wildlife habitat, air quality, visual resources, and water resources.

D. Surface owners and their existing uses are protected when there is a federal split estate minerals on private lands.

E. Lease sales for eligible lands in Niobrara County are held at least quarterly.

4.5.1.4 Oil and Gas Priority Statements:

1. The permitting process for new oil and gas drilling activities within Niobrara County should be efficient and timelines should follow Council on Environmental Quality National Environmental Policy Act guidelines to allow for more exploratory drilling and improved access to reserves.

2. The permitting processes for new activities within Niobrara County should be efficient and timelines should follow Council on Environmental Quality National Environmental Policy Act guidelines to allow for more exploratory drilling operations and improved access to reserves.

3. Federal agencies should update Niobrara County at least quarterly as to the status of all pending applications for permit to drill in Niobrara and explain to the County an expected timeline for a decision for each permit.

4. Niobrara County and Niobrara Conservation District should be informed of all potential uses of county roads and resources from oil and gas activities and associated impacts to those resources.

5. Niobrara County and Niobrara Conservation District encourage and support the nomination of more leases for sale.

6. Federal agencies are encouraged to prioritize approval of secondary and enhanced (tertiary) recovery methods where possible (e.g., fluid, gas, and steam injection) to extend the production life of a field, while maintaining air quality and available water for agricultural and domestic use.

7. Niobrara County and Niobrara Conservation District encourage the use of new technology and

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advanced production techniques to improve access to reserves in place, including long length horizontal wells and fracking.
8. Niobrara County and Niobrara Conservation District encourage coordination among federal agencies to facilitate hydrocarbon production permits in a timely manner, as prescribed in federal law.
9. Federal agencies should support the use of enhanced production techniques and the development of infrastructure to provide material supply and support to ensure further development throughout Niobrara County.
10. Niobrara County and Niobrara Conservation District encourage federal agencies to approve oil and gas leases in a timely manner and encourage justification when deferring lease applications.
11. Niobrara County and Niobrara Conservation District discourage the disposal of oil and gas produced water into surface waters of Niobrara County.
12. Niobrara County and Niobrara Conservation District encourage alternatives to flaring such as the use of pipelines, storage, etc.
13. Road agreements should be made with Niobrara County for all oil and gas permits within the County.
14. Dust mitigation plans should be made for all roads associated with oil and gas developments within Niobrara County.
15. So long as such activities will not harm private property rights, federal agencies should allow operators to capture, use, and/or store carbon dioxide during extraction activities on public lands.
16. In instances of split estate minerals where the federal agency has jurisdiction to participate in the development of a surface use plan, the federal agency should fully consider and defer to, when able, the surface owner's requests.
17. Federal agencies should facilitate reclamation and mitigation of lost or decreased forage resources that occur because of surface disturbance from oil and gas, utilities, and recreation.
18. Niobrara County and Niobrara Conservation District encourage land managers and landowners to seek technical assistance from the Natural Resource Conservation Service to mitigate surface disturbance activities, facilitate soil and water conservation, and reestablishment of native or other desired vegetation.
19. Federal agencies should discourage the use of informal policies or unofficial classifications by federal agencies to withhold high energy potential areas from leasing or development.
20. Niobrara County and Niobrara Conservation District encourage negotiation of surface use agreements on split estates and support siting of oil and gas facilities off irrigated lands, unless otherwise agreed by surface user.
21. The Bureau of Land Management should continue holding lease sales and awarding leases for Niobrara County lands on at least a quarterly basis as is required by the Mineral Leasing Act. 22. Federal agencies should work with local agricultural producers, the Niobrara Conservation District, and Niobrara County to ensure mitigation for oil and gas development is done properly and locally.

Funding derived from mineral development constitutes a significant portion of State and county revenue used to pay for essential services, including roads, fire protection, courthouses and judicial systems, libraries, landfills, hospitals, law enforcement, airports, recreation, public health, and senior citizen centers. Any curtailment of leasing and development activity significantly impacts

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the socio-economics of the communities and eliminates a critical funding stream for not just our county but all counties, the State of Wyoming and its residents.

Our ability to fund organizations would be negatively affected, which includes but is not limited to, the following: WY Child and Family Development, Children's Advocacy Project (forensic interviewing of sexually assaulted and abused children), Human Resource Council, 'Youth Development Services (Youth Crisis and Intervention Center)', Humane Society, Boys and Girls Clubs, Fair Boards, Hope Center (Domestic Violence and Sexual Assault Survivors Crisis Center and Shelter), local Libraries, Behavioral and Mental Health Crisis and Intervention Centers, Economic Development organizations and various youth and community recreation organizations. Without county support these organizations will offer fewer public services and could fail and there would be insufficient funds to provide basic services at a level needed for the protection of the Niobrara County resident's health, safety, and security.

It cannot be stated enough the importance that the oil and gas industry plays in Wyoming. BLM must do all it can to find a balance between GrSG species and habitat protection with continued mineral leasing and development. This balance must be made in consideration of the interwoven land ownership patterns across Wyoming.

XII. Transportation and Transmission Objectives

Public access to routes of travel is essential to the County's transportation and public access systems and to the economic, social, political well-being, customs and culture of the communities. Many private landowners need rights-of-way across state and federal lands to access their property, to use their water rights, and to exercise their grazing rights. Rights-of-ways (ROW) and corridors provide for the development of certain types of infrastructure or facilities that are in the public interest on federal lands for a specified period of time.

3.2.1 History, Custom, and Culture Public access to routes of travel is essential to the County's transportation and public access systems and to the economic, social, political well-being, custom and culture of the communities and citizens of Niobrara County. Access, rights-of-way, and water rights were critical to the early settlers and remain critical today. Many private landowners need rights-of-way across the state and federal lands to access their property, to use their water rights, and to exercise their grazing rights. Today, access to land, water, and natural resources remains critical to the economic stability and culture of Niobrara County. Because the County also depends upon the responsible use and development of public land resources; adequate, feasible, and fully protected access is required to utilize and protect these resources. Many land uses in the County depend upon roads and rights-of-way associated with general non-motorized and motorized travel. Recreation users depend on trails and roads to hunt, camp, and enjoy the land and scenery in Niobrara County. The use and development of natural resources depend on access across and to federal and state lands. Livestock operators need access to forage on federal land and access to move livestock and construction materials to maintain and build range structures. Landowners need access in the form of rights-of-way to divert water for irrigation purposes and to provide

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water for livestock, or to use water in relation to other development. It is vital to the sustainability of the livestock industry in Niobrara County that grazing areas, and the stock trails that connect them, be open and accessible. Livestock "trailed" from one grazing area to another must have access to grazing areas on either end of that process, as well as lands in between. There are no designated stock trails within Niobrara County. The County itself relies on access to federal lands to fulfill its statutory mandate to protect the health, safety, and general welfare of the people within its jurisdiction; including but not limited to fire protection, search and rescue, flood control, law enforcement, economic development, and the maintenance of County improvements.

3.2.2 Resource Assessment and Legal Framework

Congress, as the constitutional manager of the federal lands, has made it clear through natural resource statutes that the general public must have use of and access to the federal lands. It is vital to the County's interests and performance of duties that full and complete access to the federal lands continues. Federal Highway Administration. The Federal Highway Administration (FHWA) is an agency within the U.S. Department of Transportation and was created in 1966. The mission of FHWA is to enable and empower the strengthening of a world-class highway system that promotes safety, mobility, and economic growth, while enhancing the quality of life of all Americans Under this mission, the FHWA provides resources to municipalities across the nation and in the form of indirect and direct methods. Indirectly, the FHWA provides valuable research and design guidance on numerous topics to push the industry towards a safer, efficient, and holistic network. Directly, the FHWA provides grants to the local Department of Transportation divisions to facilitate project design and construction based upon merit. These grants are distributed through the Federal Highway-Aid Program. Alongside the FHWA, numerous programs were created under the Federal Lands Highway Division (FLHD) to specifically service certain groups and were reauthorized under the Fixing America's Surface Transportation (FAST) Act.

These programs are:

- Federal Lands Access Program (FLAP): "established in 23 U.S.C. 204 to improve transportation facilities that provide access to, are adjacent to, or are located within, Federal lands. The Access Program supplements state and local resources for public roads, transit systems, and other transportation facilities, with an emphasis on high-use recreation sites and economic generators."
- Federal Lands Transportation Program (FLTP): "established in 23 U.S.C. 203 to improve the transportation infrastructure owned and maintained by federal land management agencies including National Park Service (NPS), U.S. Fish and Wildlife Service (USFWS), USFS, BLM, U.S. Army Corps of Engineers (USACE), Bureau of Reclamation (BOR), and independent federal agencies with land and natural resource management responsibilities."
- Nationally Significant Federal Lands and Tribal Projects Program (NSFLTP): "…provides funding for the construction, reconstruction, and rehabilitation of nationally significant projects within, adjacent to, or accessing Federal and tribal lands. This program provides an opportunity to address significant challenges across the nation for transportation facilities that serve Federal and tribal lands."
- Emergency Relief for Federally Owned Roads (ERFO): "established to assist federal agencies with the repair or reconstruction of tribal transportation facilities, federal lands transportation

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facilities, and other federally owned roads that are open to public travel, which are found to have suffered serious damage by a natural disaster over a wide area or by a catastrophic failure."

Regarding approved access for transportation or transmission within PHMA, the NCD will support the Wyoming EO and the surface disturbance DDCT process for determining access. However, we strongly encourage BLM and the state to coordinate and consult with the affected NCD regarding any planning process or activity that restricts, eliminates, increases, or decreases access to federal or state lands and allow the NCD the opportunity to resolve any potential conflicts with the County's objectives, principles, and policies, prior to acting.

XIII. Socioeconomics

Economic impacts do matter. Access to federally administered lands and resources are critical to ensure the socioeconomic well-being, custom, culture and stability of our communities. In Niobrara County, lands under federal or state control and decisions made for public land management can directly impact the service and non-service industries, public accessibility, and the demographics of an area. Effective coordination and consultation between the County, federal and state agencies is critical to ensuring that land management agencies thoroughly consider the effects that proposed actions have on custom, culture, and economic stability; conservation and use of the environment and natural resources in the county along with multiple use. Counties receive revenue from federal lands in many ways including mineral leasing and development, agriculture, recreation, travel and tourism, etc. Any curtailment of access to public lands will directly impact the socioeconomics of the County.

Rural counties' socioeconomic well-being, health, safety, and culture are impacted by the management of the surrounding federal and public lands. To give locally elected governments the strongest voice possible during "government-to-government" interactions, local governments can formally adopt "local land use plans" (LUPs) or NRMPs. These plans establish policy regarding the use and management of federal lands in local governments' jurisdiction and can influence the development and implementation of federal policies, programs, and decision-making that affect local communities. NRMPs are intended to help protect the local citizens' use of, and access to, federally administered lands and resources and to ensure the socioeconomic wellbeing, culture, and customs of a local community are adequately considered in federal decisions (Budd-Falen, 2018).

NCD cannot state clearly enough the importance of our ability to access federal lands to drive vibrant economic communities. BLM significantly undervalued the mineral contributions to the counties and state in the socioeconomic section. BLM must include a robust socioeconomic analysis clearly demonstrating the differences between management prescriptions in the Alternatives, which includes impacts to the tax base (royalties, rents or bonus bids, severance taxes, ad valorum taxes, sales and use tax employment income, and direct and indirect employment.) The NCD can assist in providing the most up-to-date information available for BLMs analysis.

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XIV. Environmental Justice

NCD believes that all actions should be assessed for direct and indirect impacts to the small rural communities and State as a whole. Changes in multiple use will change the social and economic values impacting the community. Limitations and barriers will continue to increase with the decrease in income from multiple use.

In conclusion, NCD is committed to continuing our engagement as a cooperating agency along with the State of Wyoming, its state agencies and BLM to work through these important issues. We encourage BLM to align with the most recent Wyoming EO, include acknowledgement and analysis of the Wyoming State Alternative and to develop a preferred alternative that takes into consideration our comments submitted herein.

Sincerely,

Bruce Kilmer – Niobrara Conservation District Chairman

CC: The Honorable Governor Mark Gordon
The Honorable United States Senator John Barrasso
The Honorable United States Senator Cynthia Lummis
The Honorable United States Congressman Harriet Hageman
Holly Kennedy – Wyoming Association of Conservation Districts

DRAFT

June 13, 2024

To whom this concerns:

Livestock grazing is good for sage grouse and should not be reduced. It promotes healthy vegetation growth, reduces fine fuels, and helps control invasive species. A recent study completed by the University of Idaho has proven that grazing provides many benefits for the species. It is important to incentivize good grazing practices rather than punish or limit grazing.

Alternative 3 is bad for sage grouse, band for the economy, bad for cooperative conservation efforts, and contrary to BLM's multiple-use mandate. Currently through its existing framework and rangeland health standards, BLM already has the adequate mechanisms in place to manage grazing in sage grouse habitat. If existing grazing management is meeting standards then sage grouse habitat is being adequately managed and conserved. There should be no additional restrictions on grazing permits. Unless livestock grazing has been determined as the single causal factor in habitat or population decline, livestock reduction in any form should not be considered by BLM in any management action.

Management decisions should be made at the local level based on site-specific impacts and ecological site potential. The plan should defer to information at the local and state level and allow decisions to be made at that level that are not top-down prescriptive and responsive to what is happening on the ground.

Rangeland improvement projects are an important tool for grazing permittees and the BLM to manage grazing at optimal levels. This plan should not result in the reduction or elimination of range improvements and should not discourage their development.

Idaho has been a leader in collaborative sage grouse conservation efforts and Idaho ranchers have proven themselves willing and able to come to the table to reach effective solutions for management concerns. The BLM's plan for Idaho should mirror the collaboratively-developed state plan.

Thanks for you consideration of our comments.

Gary and Jackie Ingram

3825 East Fork Rd.

Clayton Idaho 83227

Board of Carbon County Commissioners

Sue Jones, Chairman
R. Travis Moore, Vice Chairman
John "Willing" Johnson
Garrett Irene
John Espy

P.O. Box 6, 215 Buffalo Street
Rawlins, WY 82301
(307) 328-2668 or 800-250-9812
www.carbonwy.com
E-mail: commissioners@carbonwy.com

June 13, 2024

Greater Sage-grouse Land Use Plan Amendments EIS Comments
ATTN: HQ GRSG RMPA
U.S. Bureau of Land Management - Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101

Submitted via Federal eRulemaking Portal
Portal: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning
(Federal Register/Vol.89, No. 52/Friday, March 15, 2024/Notices)

Dear Ms. Pat Deibert:

On behalf of the Carbon County Board of Commissioners (County), please accept this letter as comments for the Bureau of Land Management's (BLM) Greater Sage-grouse (GrSG) Draft Resource Management Plan Amendment (DRMPA) and Draft Environmental Impact Statement (DEIS). The management of GrSG continues to be of great importance to us and working with federal agencies to pursue a balance between Sage-grouse conservation, multiple use of public lands, energy development and the protection of private property is critical to the long-term health of our County and the State of Wyoming.

As a member of the Wyoming County Commissioners Association (WCCA), Carbon County has been actively engaged in the GrSG RMPA process, today and historically during the 2015 and 2019 plan amendments. In addition, we have participated in the Governor's Executive Order process including the development of Wyoming Executive Order 2015-4 and 2017-2, and most recently the updated Executive Order 2019-3. The County has demonstrated through numerous efforts that we have a vested interest in proactive management of GrSG to prevent a threatened or endangered listing under the Endangered Species Act (ESA).

In Wyoming, counties serve as a legal arm of the state entrusted with carrying out statutory and regulatory goals at the local level. Counties operate at the forefront to ensure our communities are economically vibrant, safe, and healthy places to live and work. Wyoming counties serve as partners and

co-regulators of the 18.4 million acres of BLM surface lands and 42.9 million acres of federal mineral estate that fall within our jurisdictional boundaries and uniquely contain varying percentages of federal, state, and private land, which need thoughtful management. Specifically, Carbon County lands are comprised of approximately 40 % of *federal surface* and also include an unquantified amount of *federal mineral estate*, as Carbon County did not receive any response to our requests for a quantified amount from the BLM.

Furthermore, as co-regulators, Carbon County has prepared a Carbon County Comprehensive Land Use Pan, as amended, Carbon County Zoning Resolution of 2015, as amended (07/07/2020), and the Carbon County Natural Resource Management Plan to serve as the basis for communicating and coordinating with the federal government and its agencies on land and natural resource management issues. Wyo. Stat. § 18-5-208(b). Communication, coordination, and collaboration with the BLM is vital, especially where significant BLM land and minerals exists, and management decisions can significantly impact the regulatory framework, customs, culture, and socioeconomics of our counties.

As partners, Counties work diligently to support the work of our federal land managers to overcome shared challenges and achieve mutual goals. Our counties actively participate with Wyoming BLM field offices and the Wyoming State BLM office on National Environmental Policy Act (NEPA) projects, trainings and presentations, and special initiatives. This proposed Plan Amendment is no exception, as Wyoming counties participated as cooperating agencies in BLM meetings and provided administrative draft comments, where allowed.

In response to this DEIS, Carbon County submits the following detailed comments for BLM's consideration specific to this plan amendment:

I. General

- State of Wyoming – Carbon County endorses, and incorporates by reference, comments submitted by the State of Wyoming.

- Wyoming County Commissioners Association (WCCA) – Carbon County endorses, and incorporates by reference, comments submitted by WCCA.

II. Support for the Wyoming GrSG Executive Order 2019-3 (EO) and State Alternative

Carbon County has gone on record numerous times, strongly supporting BLM's alignment with the Wyoming EO to the greatest extent possible. Carbon County believes the steps taken by the BLM in the past to align with the EO is critical to successful population and habitat management. Further, coordinating and combining resources between the state, local governments and federal agencies ensures the success of long-term management approaches that benefit the species.

The creation of the Sage-grouse Implementation Team (SGIT), an on-going process occurring between a cross section of stakeholders representing a multi-jurisdictional, cross-governmental and citizen-inclusive collaborative working group, focused on developing a satisfactory management strategy to protect GrSG and its habitat. The regulatory framework ultimately developed by SGIT and incorporated into the Wyoming EO resulted in the support of the United States Fish and Wildlife Service (USFWS) as a regulatory mechanism that would in fact protect long-term viability of Sage-grouse habitat and Sage-grouse populations; thereby, avoiding a listing under the ESA.

Wyoming has worked diligently to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. Many of the issues BLM is now readdressing in this latest series of NEPA analysis includes: Priority Habitat Management Area (PHMA) mapping, habitat objectives, approaches to minimizing surface disturbance in PHMA, effects of livestock grazing, mitigation strategies including compensatory mitigation, mitigation recommendations for fluid mineral development within PHMA and General Habitat Management Area (GHMA), wild horse and burro management, adaptive management prescriptions and strategies for short-and-long term monitoring, which are all addressed in depth by the Wyoming EO.

BLM should continue to join Wyoming in supporting this EO and the regulatory framework as being the most effective for protecting the species and its habitat and allowing for a flexible strategy addressing changing conditions in a timely manner.

To this point, the State of Wyoming submitted a proposed State Alternative to be analyzed in this DEIS, which provided consistency with the EO. BLM failed to incorporate that proposed state alternative in the analysis as stating it was submitted to BLM too late in the process to be included as a stand-alone alternative. The County strongly encourages BLM to include or acknowledge the State's Alternative in the Final EIS with a sufficient explanation as to why it was not addressed in the analysis to date.

III. Cooperating Agency Process

The cooperating agency process was not without disagreement or frustration as our opportunity to engage with the federal agency, as outlined by the Counsel of Environmental Quality's (CEQ) NEPA regulations and was written into our MOUs, was ignored by the BLM. When these conflicts arose, Wyoming counties did everything in our power, and in accordance with our MOUs, to raise concerns expeditiously to resolve issues, as expressed in our candid conversations and frank letters.

While the DRMPA expresses numerous successes for cooperation throughout the process, there were certainly places that could have been improved. We also realize that the BLM is generically referred to, however, it must be clarified that this process was not run by the Wyoming state office but rather BLM Headquarters. This enlarged scale may be partly to blame for process failures during the cooperating agency process.

Unfortunately, Wyoming counties were powerless in directing how the BLM ran its cooperating agency process and meaningful opportunities for participation in the amendment process were far and few between. In an attempt to remedy this problem, Wyoming counties verbally requested improvements and sent numerous letters asking the BLM to improve the cooperating agency process and work in good faith with cooperators.

Our first letter in June of 2023 asked the BLM to develop a regular schedule of meetings (previous meetings were sprung on cooperators with minimal notice), to provide documents to review before the meetings, and to have the individuals at the BLM actually in charge of drafting the documents in the meetings. BLM did set up regular meetings and invited members of BLM HQ to participate, but documents were not shared with cooperators in advance of ,or after, the meetings.

Our second letter in August of 2023 requested the BLM follow its MOU which detailed how cooperators would be assisting in the determination of the purpose and need, development of the alternatives and management prescriptions, along with an estimation of effects of implementing each alternative. Up to this point, cooperators had only been used as editors of small portions of the management prescription tables (never impact analysis), without having the benefit of previously discussing the management prescriptions in a cooperating agency meeting.

The Western Governors' Association (WGA) wrote a similar letter to the BLM outlining concerns that it had with the mapping process, the lack of inclusion of state plans as separate alternatives, and inconsistent information shared to members of its taskforce. This letter prompted the BLM to engage the WGA Taskforce in cooperating agency meetings. While a positive development for Taskforce members, counties serving as cooperators were not invited. Additionally, it became clear that the BLM was treating the Taskforce differently as it began to share many of the documents requested by counties with the Taskforce, albeit with a disclaimer "that these documents not be shared beyond the SG Task Force."

Our third letter in December of 2023 expressed our exasperation of being given an administrative draft, most of which we had never seen or discussed, to review over the Christmas Holiday. This was the first time that any information concerning the environmental or socio-economic impacts from the range of alternatives was provided to cooperators. Unfortunately, the BLM administrative draft was largely incomplete, inconsistent, and had several sections that were simply incorrect. Specifically, it lacked impact analysis for an entire alternative, it presented erroneous acreage figures and tables for Wyoming, and was woefully inaccurate in its description of socioeconomic impacts from fluid mineral leasing and development.

The BLM acknowledged these errors and promised Wyoming cooperating counties a second review of an updated draft of the socioeconomic sections before the release of the public draft. The BLM failed to uphold this promise and cooperators were never shown updated socioeconomic information before the draft went public.

IV. Consistency with the Carbon County Natural Resource Management Plan, Carbon County Comprehensive Land Use Plan, as amended, and the Carbon County Zoning Resolution of 2015, as amended

The Federal Land Policy and Management Act (FLPMA), which governs the BLM, provides detailed requirements for "coordination" and "consistency" with local government land use plans. FLPMA states:

> To the extent practical, the BLM must stay apprised of local land use plans. The BLM must assure that local land use plans germane to the development of BLM land use plans are given consideration. To the extent practical, the BLM must assist in resolving inconsistencies between local and BLM land use plans. The BLM must provide for the meaningful involvement of local governments in the development of BLM land use programs, regulations, and decisions. 43 U.S.C. § 1712(c)(9).

There is no indication in the DEIS that BLM was apprised of local land use plans or assured that those plans were given consideration as required by FLMPA. Nowhere in the DRMPA does the BLM even quantify the local plans within the amendment area, not to mention, assure those plans are given consideration. At a minimum, the BLM should include a list of the local land use plans that are within the amendment boundary. For further assistance, Carbon County has attached its Carbon County Natural Resource Management Plan, dated 2021, in its entirety for your consideration. The Carbon County Natural Resource Management Plan was approved July 6, 2021 by Resolution No. 2021-25; website: http://www.carbonwy.com/DocumentCenter/View/5912/19317_CarbonNRMP_Final_Updated_07022021

FLPMA also requires that within the environmental consequences section of an EIS, the BLM include a discussion of all "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned." 40 C.F.R. § 1502.16(a)(5). Further, where any inconsistency exists, the BLM is required to provide a statement describing "the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d). An RMP may be inconsistent with local plans only where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and regulations applicable to public lands. *Id.*; 43 C.F.R. § 1610.3-2(a).

There is no discussion of possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned. Not only does this discussion concern local land use plans, but the BLM must also discuss the conflicts with its own mandates and laws. Specifically, it should discuss the obvious conflicts present in Alternative 3 with its multiple use and sustained yield mandate.

The BLM seems to suggest it does not need to do additional consistency review when it states on page ES-12: "Some counties identified their preference for management actions from one alternative or another. It is important to note that these preferences did not specifically cite state or county plan, program, or policy language."

This statement is false and should be removed from the DRMPA. Counties and the State of Wyoming both provided verbal and written comments and identified preferences of management actions based on the State's EO and county plans, programs, and policies. To the extent that additional citation or specificity was desired, the BLM should have asked for it and provided an opportunity for cooperators to provide it.

The DEIS rightfully acknowledges on page 1-12 that "BLM RMPs be consistent with officially approved or adopted resource-related plans of other Federal, State, local, and Tribal governments and policies and programs contained therein, to the extent that they are consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands." However, the DEIS does not address inconsistencies with local plans but instead, claims that the BLM will identify inconsistencies in the Final EIS after receiving comments from state and local government agencies.

Carbon County believes that the BLM's approach of waiting until the final stage to address inconsistencies in the EIS is flawed. This delay prevents state and local government agencies from providing input during the drafting phase, which could have led to substantive comments that might alter the project's components and subsequent analyses. A federal agency should not address consistency

solely by responding to concerns raised through comments. Instead, the BLM should have taken an active approach in identifying inconsistencies and addressing them in the DEIS. It is clear that the process by which BLM included a thorough consistency review of the Carbon County local natural resource plan fell far short of adequate and examples of specific inconsistencies will be detailed in this letter below.

IV. Disturbance Caps

The County recognizes the importance and necessity of establishing appropriate disturbance caps to ensure that disturbance to an area does not exceed tolerance levels of the GrSG. The Wyoming State Legislature, federal, state and local agencies, industries, conservation organizations, and landowners have dedicated significant time and resources to conserve GrSG populations in the State. We have shown the capacity and authority to protect and manage the species and its habitats on all lands by establishing oversight mechanisms and implementing protection measures, including developing a disturbance cap using the Density Disturbance Calculation Tool (DDCT). The DDCT establishes a disturbance cap of 5% for suitable GrSG habitat per an average of 640 acres over the entire DDCT assessment area.

To align with the State's EO for GrSG management strategies and to facilitate prompt calculations of disturbance areas, the County suggests that Wyoming be exempt from the 3% HAF fine scale disturbance cap, regardless of the chosen alternative under the EIS. While the BLM would still be able to gather and quantify whatever disturbance data it chooses, the 3% HAF fine scale disturbance cap should not be another disturbance calculator for permit authorization.

Currently, the disturbance levels in Wyoming, including those from fire and agriculture, are well below the 3% cap, making the requirement to meet this cap largely redundant and an inefficient use of time. Moreover, since the 3% HAF fine scale disturbance cap overlooks disturbances from fire and agriculture, which the DDCT includes, utilizing the DDCT for calculating the disturbance cap offers a more inclusive and simpler approach.

As stated earlier, the County supports the Wyoming EO including the utilization of the 5% surface disturbance cap along with the DDCT process, which has proven to be a sufficient management tool of surface disturbing activity within PHMA (core) habitat.

Additionally, the introduction of two disturbance caps could eventually lead to scenarios where one cap is met but the other is exceeded. The DEIS lacks clarity on how the BLM would manage such situations, potentially opening the door to disputes and outside legal challenges. Carbon County is concerned that any perceived discrepancy between the two disturbance calculations could fuel litigation from parties with the intent on halting the permit process. Clarity is key.

If the BLM proceeds with dual disturbance caps, the County would expect the agency to honor its verbal commitment made at the SGIT public meeting on May 29th, 2024, to engage with the State of Wyoming when discrepancies between disturbance caps arise.

Ultimately, by adhering to the established DDCT 5% disturbance cap, the BLM would not only effectively safeguard the habitat of the GrSG from excessive disturbance but also circumvent unnecessary project delays that could stem from additional coordination and potential litigation.

V. Grazing Management Objectives

Agriculture and livestock production in the County is necessary for the economy, its tax base, and the livelihood of the ranching/farming businesses and related industries. It is also vital to the well-being and continued health of natural resources on federal, state, and private lands. The range production of livestock and livestock grazing are management tools that are used to maintain and enhance the rangeland resource, which benefits watersheds, wildlife, water quality, and recreation, as well as providing needed forage for sustaining livestock production and wildlife habitat. Livestock grazing has been a major industry in Carbon County since early settlement and continues to be a vital part of the custom and culture of the County as well as an economic driver.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 198-201 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- **9.2.3 Resource Management Objectives (Livestock Grazing):**
  - A. Livestock grazing is maintained as a viable major component of the economy, custom, and culture of Carbon County.
  - B. Wyoming Standards for Healthy Rangelands are used as the basis for administering livestock grazing on Bureau of Land Management and United States Forest Service managed lands within Carbon County.
  - G. Support the use of grazing flexibility and outcome-based grazing for all grazing permit renewals and allotment decisions where appropriate within Carbon County.

- **9.2.4 Priorities (Livestock and Grazing):**
  - 5. Support livestock grazing on all federally owned and operated lands within Carbon County as an integral part of habitat management.
  - 12. The reduction of domestic livestock grazing animal unit months to provide additional forage for another species or strictly for conservation purposes is not supported.
  - 13. The reduction of domestic livestock grazing animal unit months for the benefit of another "multiple-use" is not supported.
  - 14. Animal unit months on federal lands shall not be reduced unless a documented resource condition indicates a need for temporary reduction to improve rangeland condition as determined by a Wyoming Standards for Healthy Rangelands and Guidelines Assessment.

In addition, Carbon County encourages BLM to be consistent with the BLM Land Health Standards LHS) and specifically Standard 4 which addresses special status species management (SSS). Furthermore, the management prescriptions pertaining to livestock grazing identified in Chapter 2 (page 2-104, Table 2-12) of the DEIS should be made consistent in Chapter 4 and throughout the entirety of the document.

Specific to Adaptive Management (AM) and grazing in Alternatives 3-6, BLM has removed livestock grazing from the narrative and embedded it in the alternatives table in Chapter 2. The language in the alternatives table for AM is not consistent with current BLM rules and regulations, nor is it consistent with the Alternatives for Livestock Grazing in Chapter 2.

BLM should allow for grazing to be included in the AM process and be consistent with existing alternative language. BLM uses the terms "causal" and "contributing factors" incorrectly. Livestock grazing must be identified as a significant causal factor for LHS SSS before any modifications occur to a livestock grazing permits or leases. The County requests that the following language be considered in the alternatives: Specific to GrSG habitat, manage livestock grazing in a manner that 1) meets or makes progress toward meeting the Land Health Standard for special status species, and applies the guideline that addresses "restoring, maintaining, or enhancing habitats of...special status species to promote their conservation." (43 CFR Part 4180.2(e)(9))

Moreover, under Alternative 3, BLM analyzed for a "no grazing" alternative for all states stating "…Because PHMA would be unavailable for livestock grazing, no overarching livestock grazing objective would be needed." This alternative is economically and technically unfeasible to implement as it is in violation of the Taylor Grazing Act. The most appropriate action, as identified by the CEQ NEPA Regulations, would have been for BLM to consider it and eliminate it from further analysis as it does not meet the standard of alternatives that should be analyzed as "technically or economically" feasible. The County is strongly opposed to a "no grazing alternative" in any form.

Regarding fencing, the County generally supports wildlife friendly fencing; however, BLM must coordinate with the applicable grazing lessees should the removal of fencing be considered as those decisions could impact grazing allotments and management of the resource. Finally, any changes in grazing management should consider effects to the adjoining private or state lands as this could impact grazing management practices.

As demonstrated, agriculture production and livestock grazing are significant for the Counties. Not only do they provide an important tax base, the industry is a historical part of the local custom and culture. In the preferred alternative, the County supports the maximum amount of animal unit months (AUMs) being available for livestock grazing on BLM lands in PHMA and GHMA.

VI. Mitigation

Wyoming remains committed to working with its federal partners to develop a mitigation strategy that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. While BLM must adhere to its mitigation hierarchy (avoid, minimize, rectify, reduce, compensate), the County encourages the federal agency to work with the State of Wyoming by following the well-founded principles in the EO regarding adaptive management and the mitigation framework which includes steps for requiring compensatory mitigation. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner and provides regulatory certainty for all parties involved.

VII. Private Property Rights

As stated earlier, Carbon County is rich in federal resources as our lands are comprised of approximately 40% *federal surface* and an unquantified amount of *federal minerals*. Farming, ranching, energy development, tourism and recreation contribute heavily to the heritage of the County. Rangeland used by livestock and agricultural producers continues to be the dominant land use and federal agencies should consider the effects their decisions will have on neighboring private lands.

Furthermore, access to, or restrictions from, crossing federal, state, or county managed lands should not entail encumbrances or constraints on private property. Private property rights are the cornerstone of our County and must be protected to ensure that our continued customs and culture remain intact. When an agency decision or proposed action will have a negative impact to the current use of neighboring private lands, that federal undertaking may not be supported by the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 30-32 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- **2.2.3 Resource Management Objectives (Cultural Resources):**
  - A. Federal actions affecting cultural, historical, and paleontological resources are made in consultation with Carbon County.
  - B. Any work toward a proposed new listing in the National Register of Historic Places is coordinated with Carbon County.
  - E. Carbon County is the primary source in deciding the cultural importance of sites found within the County.

- **2.2.4 Priorities (Cultural Resources):**
  1. State and federal authorities should coordinate with Carbon County and allow the County to participate in the identification of sites with significant cultural resources in the County, make such sites known, and evaluate the significance of proposed land use actions and their impact on cultural resources.
  3. Support making significant local cultural resources available for research and education and urge the protection of those cultural resources.
  6. Support private property rights as paramount for cultural, historical, geological, and paleontological resources thought to be on private lands.
  13. Carbon County opposes public land management actions that restrict public access to cultural, historic, and paleontological resources, except as required by law or if restrictions are enforced to protect current uses on public lands.

Carbon County is particularly concerned about the failure of the DRMPA from analyzing the effects on neighboring state and private lands in the analysis area. Whether described as adjacency effects or cumulative effects, in a state where the BLM manages approximately 18 million surface acres and 41 million subsurface acers (66% of the state), there are substantial impacts to private and state lands across the decision area.

Management and ownership patterns lack uniformity creating a complex and interwoven mix of state, private, and federal minerals that are often “coproduced.” The scale of coproduction can vary in degree and can be described in several ways. First, oil and gas can be coproduced by an individual wellbore that crosses through and produces the varying mineral estates. Second, oil and gas can be coproduced inside a drilling and spacing unit, where specific production is pro-rated to the percent of ownership in the drilling area. Finally, oil and gas can be coproduced across the entirety of a company’s development play.

Oil and gas companies, like any other enterprise, must take into account risk/reward, scalability for cost saving, future development potential, infrastructure needs, and regulatory regimes. Operators prioritize areas for development where they can maximize returns and reduce risks. In the current phase of development in Wyoming's Powder River Basin, operators have large swaths of development to minimize risks, provide operational flexibility, and cost share infrastructure. Even where a wellbore doesn't penetrate federal minerals in a particular drilling and spacing unit, gathering lines, pipelines, transmission lines, and roads to get product to the market inevitably run into federal management at some juncture. Therefore, ROW and surface occupancy restrictions have significant implications for private and state lands and minerals.

This analysis needs to be included in DRMPA. The BLM should acknowledge and analyze the cumulative effects of restrictions on the socioeconomics of our communities. The BLM's socioeconomic analysis should describe the human interests and values shaping public lands management, identifying effects of proposed actions on communities and economies, and promote the economic and social sustainability of communities near public lands.

VIII. Adaptive Management

Wyoming has worked diligently with its federal partners (BLM and USFWS) to develop a framework that proactively addresses changing conditions specific to the management of GrSG populations and sagebrush habitat. The adaptive management framework considers management strategies for short-and-long term monitoring that are most effective for protecting the species and its habitat while allowing for a flexible strategy addressing changing conditions in a timely manner.

Under Wyoming Statute § 23-1-103, "…all wildlife in Wyoming is the property of the state…" and the Wyoming Game and Fish Department (WGFD) has the legal responsibility for carrying out the purposes of this act. Using the best available science in the Adaptive Management process is necessary to continue long-term healthy populations of GrSG. Recognizing the WGFDs expertise, the State's Adaptive Management strategy places the responsibility of conducting annual population data squarely with the state agency. It is imperative that BLM recognize the WGFDs authority and expertise in this process. The County implores BLM to defer to the WGFD regarding any data collection or management decisions that pertain to the population trend analysis of GrSG within the boundaries of Wyoming.

IX. Wild Horses

In 1971, Congress enacted the Wild Free-Roaming Horse and Burro Act (Public Law 92-195), which guides the management, protection and control of wild horses and burros on federal lands managed by the USFS and BLM. Herd Management Areas (HMAs) were established in ten Western states based on the existing populations during the passing of the Act in 1971. This Act also mandates that wild/feral horses and burros are managed in a thriving ecological balance with the land and as part of the natural landscape (USFS 2021b). To ensure wild/feral horse and burro populations remain in good condition and that federal lands are protected from degradation, the growth of wild/feral horse and burro herds must be actively managed.

Population control is necessary to protect fragile ecosystems, balance shared use of resources by wildlife, and maintain herd health and protect herds from starvation. Carbon County encourages

aggressive wild horse and burro management that will not adversely impact rangeland resources, livestock or grazing, wildlife habitat or resources, soil resources, or other varied land uses.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 166-167 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- **7.1.3 Resource Management Objectives (Wild Horses):**
  - A. Wild horses are managed for a viable, healthy herd resulting in the thriving natural ecological balance of other resources (including the standards and guidelines for rangeland health) and multiple uses as required by the Wild Free-Roaming Horses and Burro Act of 1971.
  - B. Excess horses in herd management areas are gathered to reduce horse numbers to lower appropriate management levels to reduce the frequency of gathers while maintaining a thriving natural ecological balance.
  - G. The Bureau of Land Management will notify and consult with Carbon County whenever there is a proposal to either expand wild horses onto private land or create any wild horse-related holding facility.

- **7.1.4 Priorities (Wild Horses):**
  1. Any equine animal released from private individuals, tribes, or neighboring lands onto public lands after 1971 shall be considered as estray and be removed.
  2. The Bureau of Land Management should not propose any enlargement or expansion of the current herd management areas boundaries nor the designation of any additional new herd management areas or herd areas.
  5. The Bureau of Land Management should encourage the creation of public education programs through the Extension Service to inform the public at large about the need to maintain healthy ecosystems and the differences between livestock, wild horse, and wildlife needs and impacts.
  7. Any reduction in herd management areas size shall be completed with a proportional reduction in appropriate management level.

The only viable alternative analyzed that appropriately addresses actual management of wild horse and burros is Alternative 3 (page 2-114, Table 2-13). Managing for "zero" Appropriate Management Levels (AMLs) within HMAs that overlap with PHMA and removing wild horses in those areas is the proper land management prescription and is the only realistic method for meeting AML at the implementation level. For the benefit of the GrSG, all available agency tools must be used to support herd management plans that prevent habitat degradation and native wildlife displacement, including the removal of all wild horses and burros from PHMA.

The State of Wyoming submitted alternative language for wild horses that based any removal of HMAs on whether wild horses were the causal factor of range degradation for a certain period of years. While substantial evidence already exists, that wild horses cause significant range damage and negatively impact GrSG, Wyoming's recommended approach would have been more economically, politically, and scientifically defensible. Unfortunately, this alternative was not properly considered in any of the other alternatives.

X. Lack of Need for ACECs

The WCCA conducted a consistency review on a statewide basis of the DEIS alternatives in relation to ACECs and county natural resource plans, which is summarized in the attached table. In addition to the consistency table, the text below details the concerns regarding the BLM's inadequate and untimely consistency review and the unnecessary designation of ACECs in areas with existing and adequate PHMA designations to manage for and protect GrSG.

An ACEC is defined as "areas within the public lands where special management attention is required ... to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." 43 U.S.C. § 1702(a).

A potential ACEC must satisfy a three-part test before it may be designated. First, it must have "relevance," meaning it possesses "a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard." 43 C.F.R. § 1610.7-2(a)(l). Second, it must also have "importance," meaning the relevant values identified in the first step must have "substantial significance and values." 43 C.F.R. § 1610.7-2(a)(2); see also BLM Manual 1613, Section 1 l.B. For the relevance values to meet the "importance" threshold, the area must have "more than locally significant qualities ... compared to any similar resource," have qualities that make it fragile, rare, or irreplaceable, or been recognized as warranting protection to satisfy national priority concerns. BLM Manual 1613, Section 11.B.1. Third, the nominated area must require "special management" "to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish, wildlife, and plant resources, or other natural system or processes." 43 U.S.C. § 1702(a).

Certainly, ACECs can play a role in conservation and special management of historic, cultural, scenic, fish and wildlife resources. However, the BLM has not demonstrated how the addition of the proposed ACECs under Alternative 3 of the DEIS will improve Greater Sage-grouse populations and habitat more effectively than Priority Habitat Management Areas (PHMAs). Under Alternative 3, the DEIS states that the ACECs would be managed similarly to PHMAs, without additional management prescriptions. Carbon County strongly feels that the designation of ACECs under Alternative 3 are unnecessary given that they will be managed exactly the same as PHMAs. The BLM fails to consider how GrSG populations and habitat are already protected under existing management actions and will be further protected by the proposed management actions under Alternatives 3 of the DEIS. A significant example of this failure is the BLM's attempt to layer ACEC designations on top of existing ACECs like in Fremont and Sublette Counties.

Furthermore, ACEC designations could allow for excessive regulatory authority in the future for areas that are otherwise considered appropriate for PHMA management. Unnecessary designation opens the door for further impediments to multiple use practices.

Attached to this letter, you will find a spreadsheet that provides a thorough review of inconsistencies between the above-mentioned Wyoming County NRMPs and the proposed ACEC resource management restrictions under Alternatives 3 and 6 of the DEIS.

In addition, the County has identified several inconsistencies between the DEIS and the Carbon County Natural Resource Management Plans (NRMP) directly affected by the proposed ACECs. For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 61-62 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- **3.3.3 Resource Management Objectives (Special Management Areas):**
  A. Carbon County is coordinated with on current management strategies on lands currently listed or proposed for listing as special designation or special management areas.
  B. Historic uses are maintained on lands already designated as Wilderness, Wilderness Study Areas, Areas of Critical Environmental Concern, other special designation areas, or areas inventoried as lands with wilderness characteristics.

- **3.3.4 Priorities (Special Management Areas):**
  2. The Bureau of Land Management should coordinate with Carbon County early and allow the County to participate as a cooperating agency whenever there is an Area of Critical Environmental Concern proposal on land managed by the Bureau of Land Management.
  3. Proposals for Areas of Critical Environmental Concern designations shall strictly adhere to the relevance and importance criteria, and the Bureau of Land Management must demonstrate, using credible data, the need for an Area of Critical Environmental Concern designation to protect the area in question and prevent irreparable damage to resources, natural systems, or the economy of the local area.
  4. Any Area of Critical Environmental Concern designation should address the reason for designation and not extend beyond the reason for the designation.
  6. Management of special designation areas should be coordinated with Carbon County and consistent to the maximum degree with the Carbon County Natural Resource Management Plan.
  8. Carbon County supports the continued use of livestock grazing in all special management or designation areas unless prohibited by law.
  14. Economic and environmental cumulative impacts analysis should be conducted for all existing and proposed designations of any specially designated areas before any new areas are designated or expanded.

Carbon County strongly opposes the designation of any Sage-grouse ACECs in Wyoming. As discussed earlier in these comments, we have worked diligently as a state to develop a framework that effectively manages for GrSG populations and its habitat and no new ACEC designations are warranted nor will they provide any additional protections not already in place.

XI. Fluid Mineral Development and Leasing Objective

Likely the most substantial direct impact to local government revenue in Wyoming is the management prescription for oil and gas development. Consequently, it is vital to correctly capture existing development and the Reasonably Foreseeable Development Scenario (RFDs). The RFD is even more important to get correct when it is comparing the potential impacts from wildly inconsistent

alternatives. If poor or incorrect data is utilized to develop the RFD, then the RFD and resulting socioeconomic analysis will be flawed.

Certain portions of the BLM's description and analysis of existing oil and gas could be improved. For example, on 12-38 the BLM reports 9,127 wells have been "drilled" in Wyoming between 2013 and 2023. However, this figure includes workovers and wells that were never completed, which may capture wells that were never actually "drilled." The section properly includes data from the Wyoming Oil and Gas Conservation Commission, which reflects a total of 6,455 unique well spuds in Wyoming between 2013 and 2023. However, the fact that the state's number is 30% less than the BLM's number reflects a poor attempt to gather and clean-up the data for analysis.

On page 12-39, the DRMPA states that 24% of the HMAs in Wyoming are under an existing authorized lease. Additional data that should have been reflected in the DRMPA and clarified in this section is the number of leased acreage currently under litigation in Wyoming. Without including litigated leases in Table 35, it is misleading to members of the public that equate "authorized" as available for development.

In order to understand whether the RFD is truly reasonable there should be a greater description of what was utilized for inputs and variables. Table 35 in Appendix 12 would benefit from a better description of the "source" of the data provided in the table. In addition, there needs to be additional description of the table to help clarify whether these projected wells are federal surface and minerals, private/state surface and federal minerals, or mixed minerals and surface, etc.

The "Projected Production by Alternative in the Decision Area" needs to be amended to more accurately reflect the decline curves associated with modern horizontal development in Wyoming. Without any written description or justification, the projection utilizes a record production year in Wyoming as its basis for production over the next 20 years. In other words, the current projections do not consider decline curves of existing and new wells but keep historic production levels constant. However, it must be noted that the only way to maintain that statewide production level as production declines from existing wells is to drill and produce new wells.

The problem with maintaining existing production as a constant in the RFD is that it artificially reduces the negative economic impacts associated with alternatives 3 and 4 reduced projected well development. This is because the weight given to new wells is significantly reduced by the artificial base production of the existing wells.

Under Alternative 3 only 4,284 wells are expected to be drilled in the next 20 years. This is compared to Alternative 1 that projects 14,450 wells drilled in the same period of time. Although alternative 3 projects over 10,000 less wells are drilled in 20 years it only reduces the production of oil by roughly 224,000,000 barrels and gas by 4,600,000,000 mcf of gas.

Taxes derived from oil and gas development in Wyoming constitutes a significant portion of state and county revenue used to pay for public education and essential services, including roads, fire protection, emergency medical services, courthouses, libraries, landfills, hospitals, law enforcement,

airports, recreation, and senior citizen centers. In Carbon County, oil and gas revenues are $4,747,134 making up 20.33% of our operational budget.

Oil and gas companies operating in Wyoming are assessed property (ad valorem) taxes by counties and severance taxes by the state. Although they are called "taxes" both are more akin to a royalty because production is taxed regardless of whether an operator makes a profit. Property taxes on oil and gas vary by county and range from 6-7.3% calculated by the gross revenue of the previous year's production and the value of tangible equipment and improvements. Severance taxes are calculated at 6% of gross revenue in the same manner as royalty taxes (gross revenue minus transportation and gas processing cost). Federal Royalties are also deducted from the gross revenue for the purpose of calculating severance taxes.

Property taxes on oil and gas account for over 40% of the total property taxes levied by counties in Wyoming. In 2020, the property taxes collected by counties exceeded $600 million. Additionally, severance taxes collected by the state in 2022 topped $275 million. When adding in federal lease revenues, federal and state royalties, sale and use taxes, and conservation taxes, the industry contributed $1.23 billion in taxes to state and local governments.

Oil and gas development is also subject to sales and use taxes. According to the Wyoming Department of Revenue, 12.93% of Carbon County's sales tax directly comes from the mineral industry. This does not count the secondary sales tax paid by those companies when they purchase goods from local businesses.

Furthermore, ad valorum taxes associated with oil and gas production generated an average of over $18,666,344 a year for Carbon County. This represents over 32% of all property tax paid in the County. A decrease in assessed valuation will affect all County operations including essential services like road and bridge construction and maintenance, investment in IT technology and cyber security, economic diversification investment (water, sewer and streets), fire equipment and personal, and daily operations.

As noted on the Petroleum Association of Wyoming (PAW) website, Wyoming ranked 8th in production of both crude oil and natural gas in 2022 nationally. Further, Wyoming ranked the 2nd largest producer of both oil and natural gas on federal lands, making the state disproportionally affected by national policy changes. According to a 2023 study released by the American Petroleum Institute, in 2021 the oil and natural gas had the following impacts on the Wyoming economy: 58,780 total jobs and $5.7 Billion in labor income.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 81-82 and Pages 86-88 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- **4.4.3 Resource Management Objectives (Mining & Mineral Resources):**
  A. Mineral resources are extracted within Carbon County while maintaining a sustainable balance with other resources to achieve a high quality of life for County residents.
  B. Carbon County is included in any regulatory or management process or decision involving minerals which impacts its customs, culture, and economic stability.

C. Coordination is enhanced and streamlined with all agencies involved in the regulatory process of mineral extraction as provided for by federal and state law.

- **4.4.4 Priorities (Mining & Mineral Resources):**
  1. The permitting process for new activities within Carbon County should be efficient and timelines should follow National Environmental Policy Act guidelines to allow for more exploratory drilling and mining and improved access to reserves.
  2. Partnerships with mineral industries, state agencies, federal agencies, and Carbon County should be established to increase and share knowledge of the mineral estate, and to develop and foster trust among partners.
  3. Federal agencies should require that "public lands will be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands, including implementation of the Mining and Minerals Policy Act of 1970," as stated in the Federal Lands Policy and Management Act.
  6. All exploration, development, and mining on federal lands in Carbon County with mineral or energy potential shall be governed by adherence to all laws which pertain to mining and energy development and production.

- **4.5.1.3 Resource Management Objectives (Oil and Gas):**
  A. Responsible extraction of oil and gas within Carbon County continues while also maintaining a sustainable balance with other resources to achieve quality of life for County residents.
  B. Carbon County is a part of any regulatory process regarding oil and gas which impacts its custom, culture, and economic stability.

- **4.5.1.4 Priorities (Oil and Gas):**
  1. The permitting process for new oil and gas drilling activities within Carbon County should be efficient and timelines should follow National Environmental Policy Act guidelines to allow for more exploratory drilling and improved access to reserves.
  2. Federal agencies should pursue opportunities to encourage the nomination of more oil and gas leases for sale.
  3. Federal agencies should prioritize approval of secondary and enhanced (tertiary) oil and gas recovery methods where possible (e.g., fluid, gas, and steam injection) to extend the production life of a field while maintaining air quality and available water quality and quantity for agricultural and domestic use.

Funding derived from mineral development constitutes a significant portion of State and County revenue used to pay for essential services, including roads, fire protection, courthouses and judicial systems, libraries, landfills, hospitals, law enforcement, airports, recreation, public health, and senior citizen centers. Any curtailment of leasing and development activity significantly impacts the socio-economics of the communities and eliminates a critical funding stream for not just our County but all counties, the State of Wyoming and its residents.

Our ability to fund organizations would be negatively affected, which includes but is not limited to, the following: WY Child and Family Development, Children's Advocacy Project (forensic interviewing of sexually assaulted and abused children), Human Resource Council, 'Youth Development Services (Youth Crisis and Intervention Center)', Humane Society, Boys and Girls Clubs, County Fair Boards, Hope Center (Domestic Violence and Sexual Assault Survivors Crisis Center and Shelter), local Libraries, Behavioral and Mental Health Crisis and Intervention Centers, Economic Development organizations and various youth and community recreation organizations. Without County support these organizations will offer fewer public services and could fail and there would be insufficient funds to provide basic services at a level needed for the protection of the county resident's health, safety, and security.

It cannot be stated enough the importance that the oil and gas industry plays in Wyoming. BLM must do all it can to find a balance between GrSG species and habitat protection with continued mineral leasing and development. This balance must be made in consideration of the interwoven land ownership patterns across Wyoming.

XII. Transportation and Transmission Objectives

Public access to routes of travel is essential to the County's transportation and public access systems and to the economic, social, political well-being, customs and culture of the communities. Many private landowners need rights-of-way across state and federal lands to access their property, to use their water rights, and to exercise their grazing rights. Rights-of-ways (ROW) and corridors provide for the development of certain types of infrastructure or facilities that are in the public interest on federal lands for a specified period of time.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 43-44 for Transportation access and Page 100 for Transmission access of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- **3.2.3 Resource Management Objectives (Transportation):**
  A. Full and open access to Carbon County federal lands for purposes such as safety, health, and welfare of Carbon County is maintained and expanded where possible.
  B. Roads are maintained and expanded for economic uses, such as agriculture, mining/oil and gas industries, energy industries, communication infrastructure, and recreation where possible so long as such access, maintenance, or expansion does not harm private property rights.

- **3.2.4 Priorities (Transportation):**
  1. No road, trail, or R.S. 2477 right of way on federal lands shall be permanently closed unless public safety or health demands its closing and the proper analysis, disclosure, and procedure, in consultation with Carbon County, is completed prior to closure.
  2. Carbon County should be notified in advance of any planning process or activity that has the potential to restrict, eliminate, or expand access from federal to state or private lands and allow the County to initiate coordination and cooperation to resolve any potential conflicts with Carbon County's objectives, principles, and policies, prior to acting.

3. Federal agencies should work with Carbon County to reopen roads and trails that were closed by an agency without specific coordination with the County as long as it does not infringe upon private property rights.

- **4.5.5.3 Resource Management Objectives (Transmission):**

A. Energy corridors, development of pipelines, and development of transmission lines from all energy sources are created within Carbon County while a sustainable balance is maintained with other resources to achieve a high quality of life for County residents.
B. Reclamation is conducted in an efficient way that protects existing uses, utilizes best management practices, and should consider the use of nonnative seeding where appropriate and beneficial for soil stability and conservation.
D. Pipeline and transmission line development within Carbon County primarily utilize existing utility corridors and areas previously disturbed regardless of land ownership, while sensitive habitats and conflicting existing uses are avoided.

- **4.5.5.4 Priorities (Transmission):**

1. Carbon County supports the collocation of transmission lines, pipelines, etc. to reduce fragmentation across the landscape.
2. Future and existing energy corridor, pipeline, and transmission line infrastructure for the transmission of energy and/or materials in and through Carbon County should be developed and improved when it will not affect pre-existing uses or rights.
4. Carbon County encourages pipeline and transmission line development to be in the most appropriate route, avoiding sensitive habitats, the use of eminent domain, and conflicting existing and future planned uses, regardless of land ownership, with a preference to placement on federal lands or consenting landowners.
6. Pipelines should avoid water crossings and placement in river systems. Should a pipeline cross water bodies, boring and other methods that would reduce disturbance to the water body or riverbed should be required.
8. Carbon County discourages the use of eminent domain for all pipeline and powerline projects.

Regarding approved access for transportation or transmission within PHMA, the County will support the Wyoming EO and the surface disturbance DDCT process for determining access. However, we strongly encourage BLM and the state to coordinate and consult with the affected County regarding any planning process or activity that restricts, eliminates, increases, or decreases access to federal or state lands and allow the County the opportunity to resolve any potential conflicts with the County's objectives, principles, and policies, prior to acting.

XIII. Socioeconomics

Economic impacts do matter. Access to federally administered lands and resources are critical to ensure the socioeconomic well-being, custom, culture and stability of our communities. In Carbon County, lands under federal or state control and decisions made for public land management can directly impact the service and non-service industries, public accessibility, and the demographics of an area. Effective coordination and consultation between the County, federal and state agencies is critical to ensuring that land management agencies thoroughly consider the effects that proposed actions have on

custom, culture, and economic stability; conservation and use of the environment and natural resources in the County along with multiple use. Counties receive revenue from federal lands in many ways including mineral leasing and development, agriculture, recreation, travel and tourism, etc. Any curtailment of access to public lands will directly impact the socioeconomics of the County.

For the BLMs convenience we have identified a few priority policy positions from our County Natural Resource Management Plan that are impacted by this DEIS and can be found on Pages 187-188 of the County Plan. This is not a comprehensive list and BLM is encouraged to review the entirety of the County Plan for more details:

- **8.3.3 Resource Management Objectives (Economics and Socioeconomics):**
  A. Carbon County has a strong and diverse tax base.
  B. Carbon County has low unemployment and residents are self-sufficient.
  C. Carbon County retains and preserves quality jobs.
  D. Carbon County is business-friendly and supports improved education, training, and advancing employment opportunities for people who choose to work in Carbon County.

- **8.3.4 Priorities (Economics and Socioeconomics):**
  5. Support "no net loss" in Carbon County's economic base due to federal agency decisions.
  14. Federal agencies should promote multiple uses that will increase the economic diversity of Carbon County and promote efforts to efficiently analyze and approve the permitting process for those uses.
  17. A full analysis of the impact each alternative and subsequent "decision" will have on the local economy should be conducted. If it is determined that the alternative will have significant negative impact on the local economy, the alternative/decision is not supported.

The County cannot state clearly enough the importance of our ability to access federal lands to drive vibrant economic communities. BLM significantly undervalued the mineral contributions to the counties and state in the socioeconomic section. BLM must include a robust socioeconomic analysis clearly demonstrating the differences between management prescriptions in the Alternatives, which includes impacts to the tax base (royalties, rents or bonus bids, severance taxes, ad valorum taxes, sales and use tax employment income, and direct and indirect employment.) The County can assist in providing the most up-to-date information available for BLMs analysis.

Carbon County prefers Alternative 5 as it best balances GRSG conservation with public land uses. Alternative 5 places fewer limitations on resource uses, which is necessary for Carbon County's economic survival. It also provides additional opportunities to consider compensatory mitigation to reduce impacts upon GRSG and its habitat. Carbon County's economy and tax base relies upon federal land use, energy extraction and development.

In conclusion, Carbon County is committed to continuing our engagement as a cooperating agency along with the State of Wyoming, its state agencies and BLM to work through these important issues. We encourage BLM to align with the most recent Wyoming EO, include acknowledgement and analysis of the Wyoming State Alternative and better refine the Preferred Alternative 5 that takes into consideration our comments submitted herein.

Sincerely,

Sue Jones

Sue Jones, Chairman
On behalf of the Carbon County Board of County Commissioners

CC: The Honorable Governor Mark Gordon
The Honorable United States Senator John Barrasso
The Honorable United States Senator Cynthia Lummis
The Honorable United States Congressman Harriet Hageman

INTERMOUNTAIN RANGE CONSULTANTS

1000 Panther Canyon Road
Lovelock, NV 89419
Tel (775) 623 4555
Fax (888) 370 4950
bob@IntermountainRange.com

June 13, 2024

BLM Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 Sout #500
Salt Lake City, UT 84101

Submitted electronically via https://eplanning.blm.gov/eplanning-ui/project/2016719/510

Dear Planners:

Thank you for the opportunity to provide comments on the 2024 Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement (2024 Draft RMPA/EIS).

Intermountain Range Consultants has previously submitted sage-grouse planning comments as early as 2014, for the following persons/groups that include, but are not necessarily limited to Idaho entities: Brackett Livestock, Inc.; Bert and Paula Brackett and the Bert Brackett family; C.E. Brackett Cattle Co.; Chet and Kim Brackett and the Chet Brackett family; Camas Creek Cattle Association LLC; Camas Creek Ranch; Rose, Gil and Jo King and the King family; Joe Black & Sons and the Black family; John Anchustegui and the Anchustegui family; Rohl Hipwell and the Hipwell family; Simplot Livestock; Cedar Creek Cattle Company; Wintercamp Livestock Co.; Owyhee Land and Livestock; Blue Butte Grazing Association; Stanley Lehman, Tad Elison, and Vernon Elison; and Robert Thomas and the Thomas family in Idaho.

IRC has also previously submitted sage-grouse planning comments for the following Nevada and California entities: Bell Ranch; Woody and Lilla Bell; Blake Lambert; Bar-X Ranch; Fred, Bob, and Kathy Buckingham and the Buckingham family; Borba Land and Cattle LLC; Kevin and Susan Borba and the Borba family; T-5 Ranch; Dave and Debbie Cassinelli and the Dave Cassinelli family; Tom and Sharon Cassinelli and the Tom Cassinelli family; DeLong Ranches, Inc.; John and Judy DeLong; Will and Katie DeLong and the Will DeLong family; Ninety Six Ranch; Fred, Kris, and Patrice Stewart; Jay Gondolfo and the Gandolfo family; Twin Springs Ranch; ½ Fallini and Fallini family trust; Joe and Susie Fallini; Ty Berg, Anna Fallini Berg, and the Berg-Fallini family; Espil Sheep Company; John and Carolyn Espil and the John Espil family; Brent, Vicky, and John Espil; Estill Ranches LLC; John and Lani Estill and the Estill

family; Keystone Ranch; Rolfe Schwartz and the Schwartz family; Kirk Mader and family; Leon Frey and family, Lyman Youngberg; Five Fingers Gazing Association, LLC; Pete Ferraro and family; Robert J. Parlasca, Robert J., Celia, and the Parlasca family; Ron Cerri; Ron and Denise Cerri and the Cerri family; Silver Creek Ranch, the Inchauspe family, Walter Wilson and family, John and Jhona Bell and family, Henry Filippini; Shawn and Angie Mariluch and family.

Some of these parties/entities have been succeeded in interest and/or new or different entity names. We now also add Sierra Del Rio (Idaho), Tracy Ranch (Oregon), and the Redd Summit group of ranching enterprises (Nevada, Utah, Colorado) to these comments.

These entities hold livestock Grazing Permits within California, Nevada, Oregon, Idaho, Utah, and Colorado, issued by the Bureau of Land Management.

Many of these entities are also members of conservation groups or committees, including relating to sage-grouse, ducks, deer, elk and other conservation interests. Many, if not all, are also members of Rangeland Fire Protection Associations (RFPAs) in their respective locales. RFPAs are individuals who work on each of their individual ranches who are trained to suppress wildland fire, receiving the same certification as federal firefighters, and serve as first responders upon the allotments they graze, many of which contain GRSG habitat.

Because of the importance and significance of livestock grazing in California, Nevada, Oregon, Idaho, Utah, and Colorado, IRC, on behalf of these entities, has provided a number of general and specific comments to the BLM's efforts to amend land use plans for GRSG, specific as to effects to livestock grazing. These are summarized below and incorporated by reference.

- January 29, 2014, comments on the Idaho and Southwestern Montana BLM GRSG draft Land Use Plan Amendment and Environmental Impact Statement.
- January 29, 2014, comments on the Nevada and NE California BLM GRSG draft Land Use Plan Amendment and Environmental Impact Statement.
- August 2, 2018, comments to Idaho Sage-grouse DRMPA and DEIS.
- August 2, 2018, comments to Nevada Sage-grouse DRMPA and DEIS.
- January 3, 2019 comments to 2018 Forest Service Sage-grouse Proposed LRMP and DEIS.
- February 8, 2022, comments to Scoping Invitation published in Federal Register on November 22, 2021.

Specific Comments:

1. As summarized in the above-referenced comments, "existing regulatory mechanisms" already exist to regulate permitted livestock grazing upon public lands. Nothing more is required or needed in relation to permitted livestock grazing on the public lands. As previously shared, multiple times, the USFWS reviewed the status of and threats to the GRSG in relation to the five listing factors provided in Section 4(a)(1) of the Endangered Species Act ("ESA").

2. The USFWS purportedly determined that Factor A, "the present or threatened destruction, modification, or curtailment of the habitat or range of the GRSG," and that Factor D, "the inadequacy of existing regulatory mechanisms," posed "a significant threat to the GRSG now

and in the foreseeable future". The USFWS thereafter purportedly identified the principal regulatory mechanisms for the BLM was conservation measures in resource management plans ("RMPs"). See Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment, dated September 15, 2015, at page 1-1.

3. This determination by USFWS and this predicate to the land use plan amendment (LUPA) process itself was (and continues to be) fatally flawed in relation to permitted livestock grazing upon public lands in the western United States. 43 C.F.R. Part 4100, subpart 4180[1], includes clear and explicit "regulatory mechanisms" to manage and regulate threatened or endangered, proposed, Category 1 and 2 candidate, and other special status species, under the Endangered Species Act (ESA), of which the latter was/is inclusive of GRSG. *See* 43 C.F.R. 4180.2(e)(8), 4180.2(e)(9); *see also* 43 C.F.R. 4180.2(f)(1)(viii).

4. All states where livestock grazing is permitted on BLM land include various forms of Rangeland Health Standards and Guidelines that: (1) conform to Sections 4180.2(e)(8) and 4180.2(e)(9); and (2) intend to restore, maintain, or enhance habitats for such species, including GRSG. Moreover, BLM has never stated or suggested that 43 C.F.R. 4180.2(e)(8), 4180.2(e)(9), as well as the specific Standards and Guidelines adopted across the west, are "inadequate". In fact, if that were the case, then the means-to-the-end would be to *modify the existing Standards and Guidelines*, not to implement any GRSG LUPA. Accordingly, any decision from this process should amend all plans to remove any elements as related to permitted livestock grazing on the public lands, and defer GRSG management to the BLM via continued implementation of 43 C.F.R. Part 4100, subpart 4180.

5. Assuming BLM erroneously decides against this recommendation, we provide further comments below as to livestock grazing.

6. Numerous scientific studies report that proper livestock grazing and GRSG conservation can and do beneficially co-exist. Top threats to GRSG include rangeland wildfire, invasive weeds, and development pressure, not livestock grazing. In fact, according to the 2023 Director's Report, more than 50,000 wildfires occurred in 2023, burning over 2.5 million acres – much less than the ten-year average of 6.6 million acres per year.[2] Livestock grazing is not even in the top-ten list of threats.

7. Yet, despite this, BLM has erroneously imposed landscape-wide regulatory changes on the grazing livestock industry for purposes of conserving habitat for a *single species* through an

---

[1] The U.S. Department of the Interior amended its grazing regulations set forth at 43 C.F.R. Part 4100 on August 11, 2006, *see* 71 Fed. Reg. 39,402 (2006), but the U.S. District Court for the District of Idaho enjoined the regulations from taking effect. *Western Watersheds Project v. Kraayenbrink,* 538 F. Supp.2d 1302 (D. Idaho 2008), *aff'd in relevant part*, *vacated in part*, *and remanded*, 632 F.3d 472 (9th Cir.), *cert. denied*, 565 U.S. 928 (2011). Based thereon, we cite herein the version of the grazing regulations in effect as of October 1, 2005. *See Corrigan v. BLM*, 190 IBLA 371, 374, fn. 3 (2017).

[2] Director's Report: Reflecting on the 2023 fire year and looking towards the future | U.S. Department of the Interior (doi.gov)

inflexible framework that is overly restrictive and fails to account for the site-specific conditions necessary to make informed decisions. The GRSG LUPA process elevates livestock grazing as a priority threat, even though improper livestock grazing is listed only as a secondary threat.[3]

8. Grazing being only a secondary threat (and at that only when done improperly), any decision from this process should amend all plans to remove any elements related to permitted livestock grazing, and to defer GRSG management to the BLM via continued implementation of 43 C.F.R. Part 4100, subpart 4180, so as to provide focus on "improper grazing" where it may or may not exist, as opposed to "proper grazing".

9. Specifically, as to Alternatives 3 and 6, these alternatives seek to "love the land to death". BLM should not adopt either of these alternatives, for a number of reasons. First, there is no conservation benefit to any alternative that severely restricts livestock grazing, and such acreage will only increase the carnage on the rangeland already being caused by 6.6 million acres-per-year going up in smoke. At the current rate of consumption (6.6 million acres per year), and assuming no re-burns, BLM will run out of unburned acreage on its 245 million acres, in 37 years. Second, livestock grazing helps diminish the wildfire fuel load, including annual grasses like cheatgrass. Third, such measures would devastate local economies. Fourth, any severe, arbitrary restriction of livestock Permits may be deemed to be a regulatory "taking" under the Fifth Amendment.

10. We appreciate the statement at page 1-7 of the 2024 Draft RMPA/EIS, that recognizes valid existing rights; however, the analysis needs to provide further clarification of the definition of a valid existing right. It should include Grazing Permits, as they are properties, with "the right to the possession, use, or disposal of" by the Permittees.

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[3] *See* GRSG-Conservation Objectives: Final Report dated February 2013 ("COT Report"), page 10 (wherein it is stated that "**Fire is one of the primary factors linked to loss of sagebrush-steppe habitat and corresponding population declines of greater sage-grouse** (Connelly and Braun 1997; Miller and Eddleman 2001). Loss of sagebrush habitat to wildfire has been increasing in the western portion of the greater sage-grouse range due to an increase in fire frequency. The increase in mean fire frequency in sagebrush ecosystems has been facilitated by the incursion of nonnative annual grasses, primarily *Bromus tectorum* (cheatgrass) and *Taeniatherum asperum* (medusahead) (Billings 1994; Miller and Eddleman 2001). The positive feedback loop between exotic annual grasses and fires can preclude the opportunity for sagebrush to become re-established. Exotic annual grasses and other invasive plants also alter habitat suitability for sage-grouse by reducing or eliminating native forbs and grasses essential for food and cover. **Annual grasses and noxious perennials continue to expand their range, facilitated by** ground disturbances, including wildfire (Miller and Eddleman 2001; Balch *et al.* 2013), **improper grazing** (Young *et al*. 1972, 1976), agriculture (Benvenuti 2007), and infrastructure associated with energy development (Bergquist *et al*. 2007)." Emphasis added.). *See* https://iwjv.org/sites/default/files/cot-report-with-dear-interested-reader-letter.pdf (COT Report) (last checked on 12/1/2017).

11. The 2024 Draft RMPA/EIS continues to incorporate disturbance and density caps under all alternatives. We disagree that a 3% limit on surface disturbance at the Habitat Assessment Framework (HAF) *fine scale*, as well as at the project scale, are warranted range wide. We encourage adoption of language from Chapter 2, page 2-31 that excludes livestock grazing infrastructure from the disturbance cap calculations.

12. Habitat Designation and Objectives for GRSG on Public Lands.

13. Habitat designation and objectives for GRSG should be empirically based on locally relevant GRSG locations differentiated by environmental variations, as there can be significant variability in habitat selection based on local conditions. Habitat needs to be further refined based on site specific conditions for all plans and a clear process needs to be identified for designating areas of non-habitat without having to revise land use plans.

14. One example is in Utah where community characteristics for desirable sage-grouse habitats as delineated in the 2018 Utah Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement were based on habitat vegetation data collected from sage-grouse nesting and brood rearing locations in Utah from 1998 to 2013 (Dahlgren and Messmer et al. 2018). These habitat guidelines are more specific to Utah than the general habitat guidelines for the entire range of sage-grouse released by Connelly et al. in 2000 and are a departure from the habitat guidelines that Connelly et al. defined, which BLM and USFS generally adopted in their 2015 LUPA's. This vegetation data from 1998 to 2013, in combination with community specific vegetation, climatic, and elevation data, show that sage-grouse in Utah, in general, select sites with lower and sparser vegetation conditions than Connelly's guidelines would recommend. Simplot supports the inclusion of these updated habitat objectives for Utah under all alternatives in the 2024 Draft RMPA/EIS.

15. Further, other authors have found different acceptable nesting characteristics, including Hausleitner et al. 2005, and Holloran et al. 2005, both cited in Chapter 4, page 4-7.

16. Hausleitner et al. 2005 found nest bowl and surrounding 1 meter residual heights of 10 cm (3.9 inches) in the nest bowl and 9 cm (3.5 inches) 1 meter from the nest bowl at nest initiation, which advanced to 16 cm (6.3 inches) and 13 cm (5.1 inches), respectively at hatch time. *See* Hausleitner et al.

17. Likewise, Holloran et al. 2005 found successful nests with nest-bowl residual height of 10.39 cm (4.1 inches). *See* Holloran et al. 2005, Table 3 at page 644. Holloran et al. 2005 recommended a minimum of 10 cm of residual grass within Wyominng big sagebrush dominated habitats. See Holloran et al. 2005 page 647. Additionally, Holloran et at. 2005 noted that:

> The sage-grouse habitat management guidelines (Connelly et al. 2000) recommend average perennial herbaceous cover ≥18-cm tall within breeding habitats. However, the 18-cm level was established using primarily height measurements that **included flowering portions of grasses**, while our measurements did not include these portions and might not be directly comparable (i.e., shorter grass height estimates

> could result from our measurement technique). **Additionally, the guidelines (Connelly et al. 2000) did not differentiate residual from live grasses**, and average live grass heights ≥18 cm might be required to ensure that the highest naturally growing portion of residual grasses excluding flowering stalks average at least 10-cm tall the following spring.

Bold emphasis added.

18. Regarding the grass height parameters, it is important that such measurements be conducted at the nest bowls, not willy-nilly across the landscape, and the HAF should be changed in that respect. This is rational and critical because, as noted by Hagen et al. 2007 (also cited at Chapter 4, page 4-7), sage-grouse hens select shrubs with more sagebrush cover and with taller grasses for their nest bowls, as compared to the surrounding landscape.

19. Also relative to Hagen et al. 2007 (who conducted a meta-analysis of existing research), eleven (11) of the twenty-four (24) studies reviewed (46%) did not meet the HAF "suitable" criterion for shrub cover, eleven (11) studies (46%) did not meet the HAF arid-site grass and forb cover criteria, and five (5) studies (21%) did not meet the HAF "suitable" criterion for grass heights. This further demonstrates the danger of requiring a one-size-fits-all as required by Connelly et al 2000, and Table 8-1 in Appendix 8.

20. The purported intent of Tables 8-1 A-G in Appendix 8 of the 2024 Draft RMPA/EIS is to set habitat objectives for sage-grouse habitat in various parts of the season, i.e. lek habitat, nesting/early brood rearing, late brood-rearing/summer, and winter. Appendix 8 clearly and appropriately states that assessments must consider Ecological Site Descriptions and associated state-and transition models and the sites' current ecological state, and that it is inappropriate to use a single indicator from any of the tables to determine overall habitat suitability of the plot, it is critical these statements remain within the Final RMPA/EIS and the preferred alternative.

21. However, the DEIS gives a scant nod to ESDs, including States and Transitions, and it has been our experience that, rather than base IIRH assessments upon the existing State and Phase, BLM in practice has been relying upon only "the pristine" state and phase, rather than assessing the effects of fire and other disturbances as its baseline.

22. Common within California, Nevada, Oregon, Idaho, Utah, and Colorado are at least "Loamy 8-12", "Loamy 10-13", , "Loamy 12-16" ESDs. For the sake of the record, we provide pertinent information from the ESDs as they move through different "phases" and "states" (as related to Idaho, but the ESDs are similarly worded in other States). We recognize that other ESDs exist, but the following provides a brief description of of several.

23. DISCUSSION OF Loamy 8-12" PZ).

24. The Loamy 8-12 ESD states:

> The dominant visual aspect of this site is Wyoming big sagebrush with an understory of bluebunch wheatgrass and Thurber's needlegrass. Composition by weight is approximately 45 to 55 percent grasses, 10 to 20 percent forbs, and 25 to 35 percent shrubs.
>
> The Historic Climax Plant Community (HCPC), the Reference State (State 1), moves through many phases depending on the natural and man-made forces that impact the community over time. State 1, described later, indicates some of these phases. The Reference Plant Community Phase is Phase 1.1. This plant community is dominated by bluebunch wheatgrass and Thurber's needlegrass in the understory and Wyoming big sagebrush in the overstory. Subdominant species include Sandberg bluegrass, bottlebrush squirreltail, arrowleaf balsamroot, and tapertip hawksbeard. There is a large variety of other grasses, forbs and shrubs that can occur in minor amounts. The plant species composition of Phase 1.1 is listed later under "Reference Plant Community Phase Plant Species Composition".

See **ESD**, pages 3-4. *See also* **ESD**, page 7, which states:

> The HCPC has Wyoming big sagebrush in the overstory with bluebunch wheatgrass dominating the understory. Thurber's needlegrass is the subdominant grass. Other significant species include Sandberg bluegrass, bottlebrush squirreltail, and arrowleaf balsamroot. There can be a variety of other grasses, forbs and shrubs in minor amounts. **Natural fire frequency is 50-70 years**.
>
> Bold emphasis added.

25. The Loamy 8-12 ESD describes the historical fire interval and the Historic Climax Plant Community (HCPC), as follows:

> **Fire has historically occurred on the site at intervals of 50-70 years**.
>
> The Historic Climax Plant Community (HCPC), the Reference State (State 1), moves through many phases depending on the natural and man-made forces that impact the community over time. State 1, described later, indicates some of these phases. The Reference Plant Community Phase is Phase 1.1. This plant community is dominated by bluebunch wheatgrass and Thurber's needlegrass in the understory and Wyoming big sagebrush in the overstory. Subdominant species include Sandberg bluegrass, bottlebrush squirreltail, arrowleaf balsamroot, and tapertip hawksbeard. There is a large variety of other grasses, forbs and shrubs that can occur in minor amounts. The plant species composition of Phase 1.1 is listed later under "Reference Plant Community Phase Plant Species Composition".
>
> Total annual production is 700 pounds per acre (784 kilograms per hectare) in a normal year. Production in a favorable year is 900 pounds per acre (1008 kilograms per hectare). Production in an unfavorable year is 400 pounds per acre (448 kilograms per hectare). Structurally, cool season deep rooted perennial

bunchgrasses are very dominant, followed by tall shrubs being more dominant than perennial forbs while shallow rooted bunchgrasses are subdominant.

See **ESD**, pages 3-4 (bold emphasis added).

26. The Loamy 10-13 ESD reports the influence of a lack of fire, and of fire intervals shorter than 50 to 70 years, as follows:

> Influence of fire:
>
> **In the absence of normal fire frequency**, Wyoming big sagebrush can gradually increase on the site. Grasses and forbs decrease as shrubs increase. With the continued absence of fire, Wyoming big sagebrush can displace most of the primary understory species.
>
> **When fire frequency is greater than historic levels**, **Wyoming big sagebrush is reduced significantly. Rabbitbrush can increase slightly**. With continued short fire frequency, Wyoming big sagebrush can be completely eliminated along with many of the desirable understory species such as bluebunch wheatgrass, Indian ricegrass and Thurber's needlegrass. **These species may be replaced by Sandberg bluegrass** and bulbous bluegrass along with a variety of annual and perennial forbs including noxious and invasive weeds. **Cheatgrass will invade the site**. These fine fuels will increase the fire frequency.

See **ESD**, page 4 (bold emphasis added).

27. The Loamy 8-12 ESD describes the plant community and sequence in this ecological site from improper grazing and fire, as follows:

> Plant Community and Sequence:
> Transition pathways between common vegetation states and phases:
> State 1.
> Phase 1.1 to 1.2. Develops with improper grazing management.[4]
> Phase 1.1 to 1.3. Develops with fire.
> Phase 1.2 to 1.1. Develops with prescribed grazing.
> Phase 1.3 to 1.1. Develops with prescribed grazing and no fire.
> State 1, Phase 1.2 to State 2. Develops through fire and improper grazing management. The site has crossed the threshold. It is generally not economically feasible to move this state back to State 1 with accelerated practices.
> State 1, Phase 1.3 to State 2. Develops through frequent fire and/or continued improper grazing management. The site has crossed the threshold. It is generally not economically feasible to move this state back to State 1 with accelerated practices.
> State 2 to State 3: Is a result of rangeland seeding.

[4] See Comments regarding average utilization herein, regarding Appendix C of the Draft RHA.

State 2 to unknown site. Excessive soil loss and changes in the hydrologic cycle caused by continued improper grazing management and/or frequent fire cause this state to cross a threshold and retrogress to a new site with reduced potential. It is generally not economically feasible to move this state back to State 1 with accelerated practices.

See **ESD**, pages 5-6.

28. The Loamy 8-12 ESD describes the expected plant community phase 1.3.

> **Community Phase 1.3**
> **Bluebunch Wheatgrass-Sandberg bluegrass**
> This plant community is dominated by bluebunch wheatgrass and **Sandberg bluegrass**. Some **Thurber's needlegrass may be lost due to fire.** Some Indian ricegrass or foxtail wheatgrass may be present. Bottlebrush squirreltail has increased. Forbs remain about in the same proportion as Plant Community A. **Ver little Wyoming sagebrush is present due to wildfire**, but some **rabbitbrush and horsebrush are present due to sprouting**. Some **cheatgrass has invaded the site**. This plant community is the result of wildfire.

See **ESD**, page 7-8 (bold emphasis added).

29. The Loamy 8-12 ESD describes the change to State 2: Annuals, as follows:

> **State 2**
> **Sandberg Bluegrass – Annuals.**
> **Community 2.1**
> **Sandberg bluegrass - Annuals**
> This plant community is dominated by Sandberg bluegrass, cheatgrass, and other annuals. Root sprouting shrubs such as rabbitbrush and horsebrush can be present, dependent upon, how frequent, fire has occurred. Some soil loss has occurred. This state has developed due to frequent fires or improper grazing management from Phase C State 1 and fire and improper grazing management from Phase B State 1. The site has crossed the threshold. It is generally not economically feasible to move this state back to State 1 with accelerated practices.

See **ESD**, page 8 (bold emphasis added).

30. The Loamy 8-12 ESD describes the change to State 3 (Seeded), as follows:

> State 3
> Seeded
> Community 3.1
> Seeded
> This plant community is dominated by seeded species. The seeding may be introduced species or natives to mimic the HCPC.

31. The Loamy 8-12 ESD describes the change to State 4 (Unknown or New Site), as follows:

> State 4
> Unknown or New Site
> Community 4.1
> Unknown or New Site
> This plant community has gone over the threshold to a new site. Site potential has been reduced. Significant soil loss has occurred. Infiltration has been reduced and run-off has become more rapid. This state has developed due to improper grazing management and/or frequent fires. It is generally not economically feasible to move this state back to State 1 with accelerated practices.

32. DISCUSSION OF Loamy 10-13" PZ

33. The Loamy 10-13 ESD states:

> The dominant visual aspect of this site is bluebunch wheatgrass and Wyoming big sagebrush. Composition by weight is approximately 45-55% grass, 10-15% forbs and 25-35% shrubs.
>
> The Historic Climax Plant Community (HCPC) moves through many phases depending on the natural and man-made forces that impact the community over time. State 1, described later, indicates some of these phases. The traditional HCPC is Phase 1.1. The plant species composition of Phase 1.1 is listed later under "HCPC Plant Species Composition".

See **ESD**, page 3. *See also* ESD, page 6, which states:

> ***Community Phase 1.1: Reference Plant Community***
> This plant community has Wyoming big sagebrush in the overstory with bluebunch wheatgrass dominating the understory. Thurber's needlegrass, Sandberg bluegrass, bottlebrush squirreltail and arrowleaf balsamroot are sub-dominant species. Other significant species in the plant community can include Indian ricegrass, foxtail wheatgrass, Idaho fescue, longleaf and Hoods phlox, dwarf and tall green rabbitbrush. **Natural fire frequency is 50-70 years**.

Bold emphasis added.

34. The Loamy 10-13 ESD describes the historical fire interval and the Historic Climax Plant Community (HCPC), as follows:

> **Fire has historically occurred on the site at intervals of 50-70 years.** The Historic Climax Plant Community (HCPC) is dominated by bluebunch wheatgrass in the understory and Wyoming big sagebrush in the overstory.

> Subdominant species include Thurber needlegrass, Sandberg bluegrass, bottlebrush squirreltail, arrowleaf balsamroot, tapertip hawksbeard and lupine. Total annual production is 750 pounds per acre (840 kilograms per hectare) in a normal year. Production in a favorable year is 1100 pounds per acre (1232 kilograms per hectare). Production in an unfavorable year is 400 pounds per acre (448 kilograms per hectare). Structurally, cool season deep rooted perennial bunchgrasses are very dominant, followed by tall shrubs being more dominant than perennial forbs while shallow rooted bunchgrasses are subdominant.

See **ESD**, page 4 (bold emphasis added).

35. The Loamy 10-13 ESD reports the influence of a lack of fire, and of fire intervals shorter than 50 to 70 years, as follows:

> Influence of fire:
>
> **In the absence of normal fire frequency**, Wyoming big sagebrush can gradually increase on the site. Grasses and forbs decrease as shrubs increase. With the continued absence of fire, Wyoming big sagebrush can displace most of the primary understory species.
>
> **When fire frequency is greater than historic levels**, **Wyoming big sagebrush is reduced significantly. Rabbitbrush can increase slightly**. With continued short fire frequency, Wyoming big sagebrush can be completely eliminated along with many of the desirable understory species such as bluebunch wheatgrass, Indian ricegrass and Thurber needlegrass. **These species may be replaced by Sandberg bluegrass** and bulbous bluegrass along with a variety of annual and perennial forbs including noxious and invasive weeds. **Cheatgrass will invade the site**. These fine fuels will increase the fire frequency.

See **ESD**, page 4 (bold emphasis added).

36. The Loamy 10-13 ESD describes the plant community and sequence in this ecological site from improper grazing and fire, as follows:

> Plant Community and Sequence:
> Transition pathways between common vegetation states and phases:
> State 1.
> Phase 1.1 to 1.2. Develops with improper grazing management.[5]
> Phase 1.1 to 1.3. Develops with fire.
> Phase 1.2 to 1.1. Develops with prescribed grazing.

[5] See Comments regarding average utilization herein, regarding Appendix C of the Draft RHA.

Phase 1.3 to 1.1. Develops with prescribed grazing and no fire.
State 1 to 2. Develops through frequent fire or continued improper grazing management.
State 2 to unknown site[6]. Excessive soil loss and changes in the hydrologic cycle caused by continued improper grazing management and/or frequent fire cause this state to cross a threshold and retrogress to a new site with reduced potential.

See **ESD 4**, page 5. We note that, because this ecological site is amenable to seeding of adapted perennial grasses, forbs, and shrubs, an "unknown" State can also be a Seeded State.

37. The Loamy 10-13 ESD describes the expected plant community phase 1.3.

> ***Community Phase 1.3: PSSPS-POSE***
> This plant community is dominated by bluebunch wheatgrass and **Sandberg bluegrass**. **Thurber's needlegrass and Idaho fescue can be lost due to fire**. Some Indian ricegrass or foxtail wheatgrass may be present. Bottlebrush squirreltail has increased. Forbs remain about in the same proportion as Plant Community 1.1. **Little Wyoming sagebrush is present due to wildfire**, but some **rabbitbrushes and horsebrush are present due to sprouting**. Some **cheatgrass may have invaded the site**. This plant community is the result of wildfire.

See **ESD**, page 9 (bold emphasis added).

38. The Loamy 10-13 ESD describes the change to State 2: Annuals, as follows:

> **State 2: Annuals**
> ***Community Phase 2.1: POSE-Annuals***
> This plant community is **dominated by Sandberg bluegrass, cheatgrass and other annuals.** Root sprouting shrubs such as rabbitbrush and horsebrush can be present, dependent upon how frequent fire has occurred. **Some soil loss has occurred**. This state has developed **due to frequent fires** and improper grazing management. The site has crossed the threshold. It is generally **not economically feasible to move this state back towards State 1**.

See **ESD**, page 9 (bold emphasis added).

39. The Loamy 10-13 ESD describes the Practice Limitations, as follows:

> Practice Limitations.
> This site is suited to seeding if needed. Adapted species include the crested wheatgrass group, beardless wheatgrass, dryland alfalfa and a variety of native species. Extremely stony and very stony soils will present severe

[6] Sic., we believe this is a typographical error in the ESD, and is meant to say, "State 2 to unknown State", because the concept being discussed is States and Phases.

limitations to seeding by ground moving equipment. Mechanical, chemical and fire are satisfactory and feasible methods of brush management.

See **ESD**, page 5.

40. The **ESD** does not state any expected production or species composition by weight if the Site is seeded to any of the various adapted species.

41. DISCUSSION OF Loamy 12-16" PZ.

42. The Loamy 12-16 ESD states:

> The dominant visual aspect of this site is basin big sagebrush overstory with Idaho fescue and bluebunch wheatgrass in the understory. Composition by weight is 60 to 70 percent grasses, 5 to 15 percent forbs and 20 to 30 percent shrubs.
>
> **Fire has historically occurred on the site at intervals of 20-50 years.**
>
> The Historic Climax Plant Community (HCPC), the reference State (State 1), moves through many phases depending on the natural and man-made forces that impact the community over time. State 1, described later, indicates some of these phases. The Reference Plant Community Phase is Phase A. This plant community is co-dominated by Idaho fescue and bluebunch wheatgrass in the understory and basin big sagebrush in the overstory. Subdominant species include Sandberg bluegrass, bottlebrush squirreltail, arrowleaf balsamroot, tapertip hawksbeard, and antelope bitterbrush. The plant species composition of Phase A is listed later under "Reference Plant community Phase Plant Species Composition".
>
> Total annual production is 800 pounds per acre (896 kilograms per hectare) in a normal year. Production in a favorable year is 1100 pounds per acre (1232 kilograms per hectare). Production in an unfavorable year is 550 pounds per acre (616 kilograms per hectare). Structurally, cool season deep rooted perennial bunchgrasses are very dominant, followed by tall shrubs being more dominant than perennial forbs while shallow rooted bunchgrasses are subdominant.

See **ESD**, pages 3-4 (bold emphasis added). See also ESD, page 8, which states:

> Plant Community Narrative:
> State 1, Reference State
> State 1. Phase A, Reference Plant Community Phase. This plant community has basin big sagebrush in the overstory with Idaho fescue and bluebunch wheatgrass in the understory. Other significant species in the plant community are bottlebrush squirreltail, Sandberg bluegrass, arrowleaf balsamroot, tapertip hawksbeard and antelope bitterbrush. **Natural fire frequency is 20-50 years.**

43. The Loamy 12-16 ESD reports the influence of a lack of fire, and of fire intervals shorter than 20-50 years, as follows:

> **Impacts on the Plant Community:**
> Influence of fire:
>
> In the absence of normal fire frequency, basin big sagebrush and antelope bitterbrush can gradually increase on the site. Grasses and forbs decrease as shrubs increase. Western juniper can invade the site if a seed source is in the proximity. With the continued absence of fire, basin big sagebrush or juniper can displace many of the primary understory species. See "Influence of juniper invasion" below.
>
> When fires become **more frequent than historic levels (20-50 years)**, basin big sagebrush and antelope bitterbrush are reduced significantly. Rabbitbrush can increase slightly. With continued short fire frequency, Basin big sagebrush and antelope bitterbrush can be completely eliminated along with many of the desirable understory species such as Idaho fescue and bluebunch wheatgrass. These species **may be replaced by Sandberg bluegrass and bulbous bluegrass** along with a variety of annual and perennial forbs including **noxious and invasive plants. Cheatgrass will invade the site**. These fine fuels will increase the fire frequency.

See **ESD**, page 4 (bold emphasis added).

44. The Loamy 12-16 ESD describes five plant community States (including Seeding and an unknown new site, and several Phases in the different States, including transition pathways, as follows:

> **Plant Community and Sequence**:
>
> Transition pathways between common vegetation states and phases:
>
> State 1.
> Phase A to B. Develops in the absence of fire. Improper grazing management[7] could also be present. There is a juniper seed source near the site.
> Phase A to C. Usually results from a wildfire, prescribed burn, or brush management.
> Phase A to D. Results from improper grazing management and no fire.
> Phase B to C. Results from a wildfire or brush management.
> Phase B to A. Occurs with prescribed grazing and brush management or prescribed burning.
> Phase C to A. Results from prescribed grazing and no fire.
> Phase D to A. Occurs with prescribed grazing.
> Phase D to C. Occurs with fire or prescribed burning and prescribed grazing.
> Phase C to D. Occurs with no fire and improper grazing management.

[7] See Comments regarding average utilization herein, regarding Appendix C of the Draft RHA.

State 1 Phases C & D to State 2. Develops through improper grazing management and frequent fire. This site has crossed the threshold. It is economically impractical to return this site to state 1.

State 1 Phase B to State 3. Develops with no fire and improper grazing management from a juniper invaded phase of State 1. This site has crossed the threshold. It is economically impractical to return the site to state 1 with accelerated practices.

State 2 or State 3 to State 4. Results from range seeding.

State 2 to unknown site. Excessive soil loss and changes in the hydrologic cycle caused by improper grazing management and no fire or frequent fire cause this state to cross the threshold and retrogress to a new site with reduced potential. It is economically impractical to return the site to state 1 with accelerated practices.

State 3 to unknown site. Continued lack of fire or improper grazing management cause this state to cross the threshold and retrogress to a new site with reduced potential due to significant soil loss and changes in hydrology. It is economically impractical to return the site to state 1 with accelerated practices.

See **ESD**, pages 8-9.

45. The Loamy 12-16 ESD describes the characteristics of the different States and Phases:

State 1. Phase B. This plant community is dominated in the overstory by basin big sagebrush with some western juniper seedlings and saplings invading. Idaho fescue, bluebunch wheatgrass, and Sandberg bluegrass are present in the understory but bunchgrasses have reduced vigor. Small amounts of antelope bitterbrush may be present but in reduced vigor and hedged. Some forbs such as biscuitroot, aster, milkvetch, and lupine have increased. A juniper seed source is present in nearby sites. Some cheatgrass may be present. This state has developed due to fire frequency being much longer than normal or improper grazing management with no fire.

State 1. Phase C. This plant community is dominated by bluebunch wheatgrass. Sandberg bluegrass and bottlebrush squirreltail have increased. Other perennial grasses and forbs are subdominant. Most shrubs are absent from the site due to recent fire, except some rabbitbrush may be present. Some cheatgrass may also be present. The community is a result of recent wildfire, prescribed burning or brush management.

State 1. Phase D. This plant community is dominated by basin big sagebrush in the overstory with reduced amounts of Idaho fescue and bluebunch wheatgrass. Sandberg bluegrass and bottlebrush squirreltail have increased. Small amounts of antelope bitterbrush have reduced vigor and maybe hedged in shape. There is no western juniper seed source in the proximity. Some cheatgrass may be present. This plant community has developed due to improper grazing management and no fire.

State 2. This plant community is dominated by basin big sagebrush with Sandberg bluegrass and annuals in the understory. Cheatgrass is a dominant annual in the community. A variety of invasive plants and noxious forbs may be present. Some soil loss has occurred. The community has developed due to continued improper grazing management and frequent fire. This site has crossed the threshold. It is economically impractical to return this state to State 1 with accelerated practices.

State 3. This plant community is dominated by western juniper with Sandberg bluegrass and annuals in the understory. Cheatgrass is the dominant annual. There are few shrubs present due to competition from junipers. Some deep-rooted perennials may be present under the junipers. Generally, shrub cover is below 10-15%, bare ground is above 25-30%, juniper cover is greater than 20% and infiltration less than 6 cm/hr. The site is near or has crossed the threshold to this state. Some soil loss has occurred. This plant community has developed due to continued improper grazing management and lack of fire. This site has crossed the threshold. It is economically impractical to return this community to State 1 with accelerated practices.

State 4. This plant community is dominated by the seeded range species. The seeding can be introduced species or native species that mimic the plant community in State 1.

Unknown new site. This plant community has gone over the threshold to a new site. Site potential has been reduced. Significant soil loss has occurred. Infiltration has been reduced and run-off has become more rapid. This state has developed due to continued improper grazing management and/or frequent fires or the continued absence of fire where a juniper seed source is present. This unknown new site can be reached from State 3 with further dominance of the site by juniper. It has crossed the threshold. It is economically impractical to return this site to State 1 with accelerated practices.

46. The Loamy 12—16 ESD describes the practice limitations:

Practice Limitations:

Only slight limitations exist on this site for implementing vegetation management practices. Usually this site is a key area for livestock management due to flatter slopes. Surface stones are variable. Most areas have only slight limitations for seeding, but in some areas stones will limit seeding with ground moving equipment. Slight to moderate limitations exist on this site for implementing facilitating practices such as water developments, salting and fencing. Mechanical, chemical and fire are satisfactory methods of brush management on this site. Planning should carefully analyze the stand of perennial grasses and forbs, because removal of basin big sagebrush can result in an increase in cheatgrass. If the plant community becomes dominated with cheatgrass, increased fire frequency could irreversibly degrade the community.

47. DISCUSSION OF ESD Shallow Claypan 12-16" PZ.

48. The Shallow Claypan 12-16 ESD states:

> The dominant visual aspect of this site is low sagebrush, Idaho fescue and bluebunch wheatgrass. Composition by weight is approximately 40-60 percent grasses, 15-25 percent forbs and 25-35 percent shrubs.
>
> The Historic Climax Plant Community (HCPC), the Reference State (State 1), moves through many phases depending on the natural and man-made forces that impact the community over time. State 1, described later, indicates some of these phases. The Reference Plant Community Phase is Phase A. This plant community is dominated by low sagebrush, Idaho fescue and bluebunch wheatgrass. Subdominant species include Sandberg bluegrass, bottlebrush squirreltail, Nevada bluegrass, thickspike wheatgrass, Thurber's needlegrass, arrowleaf balsamroot, Hooker's balsamroot and longleaf phlox. The plant species composition of Phase A is listed later under "Reference Plant Community Phase Plant Species Composition".

See **ESD**, page 3. *See also* ESD, page 7, which states:

> Plant Community Narrative:
> State 1, Reference State
> State 1, Phase A, Reference Plant Community Phase. This plant community is dominated by low sagebrush, bluebunch wheatgrass and Idaho fescue. Subdominant species include Sandberg bluegrass, bottlebrush squirreltail, Nevada bluegrass, thickspike wheatgrass, Thurber's needlegrass, arrowleaf balsamroot, Hooker's balsamroot and longleaf phlox. **Natural fire frequency is 80-100 years**.

Bold emphasis added.

49. The Shallow Claypan 12-16 ESD describes the historical fire interval and the Historic Climax Plant Community (HCPC), as follows:

> Fire has historically occurred on this site every **80-100 years**.
>
> The Historic Climax Plant Community (HCPC), the Reference State (State 1), moves through many phases depending on the natural and man-made forces that impact the community over time. State 1, described later, indicates some of these phases. The Reference Plant Community Phase is Phase A. This plant community is dominated by low sagebrush, Idaho fescue and bluebunch wheatgrass. Subdominant species include Sandberg bluegrass, bottlebrush squirreltail, Nevada bluegrass, thickspike wheatgrass, Thurber's needlegrass, arrowleaf balsamroot, Hooker's balsamroot and longleaf phlox. The plant species composition of Phase A is listed later under "Reference Plant Community Phase Plant Species Composition".

Total annual production is 650 pounds per acre (728 Kg/ha) in a normal year. Production in a favorable year is 950 pounds per acre (1064 Kg/ha). Production in an unfavorable year is 350 pounds per acre (392 Kg/ha). Structurally, cool season deep-rooted perennial bunchgrasses are very dominant, followed by medium height shrubs with perennial forbs and shallow rooted bunchgrasses being sub-dominant.

See **ESD**, page 3 (bold emphasis added).

50. The Shallow Claypan 12-16 ESD reports the influence of a lack of fire, and of fire intervals shorter than 80 to 100 years, as follows:

Influence of fire:

This site historically had a very low fire frequency, approximately every **80-100 years**. Most of the shrubs evolved in the absence of fire, therefore they can be severely damaged or killed when burned. Juniper can increase on the site if a seed source is in the proximity. Grasses and forbs decrease as shrubs increase. With the continued absence of fire, juniper can displace most of the shrubs and other understory species. See "Influence of juniper invasion" below.

Fine-leaved grasses such as Nevada bluegrass, Idaho fescue and Thurber's needlegrass in the community can be lost or vigor significantly reduced with fire. **Rabbitbrush** species can increase with fire. **Cheatgrass and/or medusahead** can be troublesome invaders on this site after fire, **preventing perennial grass and shrub re-establishment** and increasing the fire frequency. Sandberg bluegrass is usually maintained in the community.

See **ESD**, page 4 (bold emphasis added).

51. The Shallow Claypan 12-16 ESD describes three plant community States, and several Phases in the different States, including transition pathways, as follows:

Plant Community and Sequence:
Transition pathways between common vegetation states and phases:
State 1.
Phase A to B. Develops in the absence of fire. No juniper seed source in the proximity.
Phase A to C. Usually results from improper grazing management[8] and absence of fire. A juniper seed source is present.
Phase A to D. Results from one or more fires.
Phase A to E. Develops in the absence of fire and improper grazing management. No juniper seed source is present.
Phase B to A. Results from prescribed grazing management.

[8] See Comments regarding average utilization herein, regarding Appendix C of the Draft RHA.

Phase C to A. Develops with prescribed grazing management and prescribed burning or fire.
Phase D to A. Usually results from prescribed grazing management and no fire.
Phase E to A. Develops from prescribed grazing management and prescribed burning or brush management.
Phase B to D. This develops from prescribed burning or fire.
Phase C to D. This develops from prescribed burning or fire.

State 1 Phase E to State 2, Phase A. Results from continued improper grazing management and no fire. This site has crossed the threshold. It is economically impractical to move this site back to State 1 with accelerated practices.

State 1 Phase D to State 2, Phase B. Develops through improper grazing management and lack of fire. This site has crossed the threshold. This site has crossed the threshold. It is economically impractical to move this site back to State 1 with accelerated practices.

State 1 Phase C to State 3. Results from improper grazing management and lack of fire. This site has crossed the threshold. It is economically impractical to move this site back to State 1 with accelerated practices.

State 2 Phase A to State 2 Phase B. Results from improper grazing management and fire.

State 2 Phase B to State 2 Phase A. Results from no fire.

State 2 to unknown site. Excessive soil loss and changes in the hydrologic cycle caused by improper grazing management and/or frequent fire cause this state to retrogress to a new site with reduced potential. It has crossed the threshold. It is economically impractical to move this site back to State 1 with accelerated practices.

State 3 to unknown site. Continued lack of fire and improper grazing management cause this state to retrogress to a new site with reduced potential due to significant soil loss and changes in hydrology. It has crossed the threshold. It is economically impractical to move this site back to State 1 with accelerated practices.

See **ESD**, pages 7-8.

52. The Shallow Claypan 12-16 ESD describes the characteristic appearance of the site in different States and Phases, as follows:

Plant Community and Sequence:

Transition pathways between common vegetation states and phases:

State 1.
Phase A to B. Develops in the absence of fire. No juniper seed source in the proximity.

Phase A to C. Usually results from improper grazing management and absence of fire. A juniper seed source is present.
Phase A to D. Results from one or more fires.
Phase A to E. Develops in the absence of fire and improper grazing management. No juniper seed source is present.
Phase B to A. Results from prescribed grazing management.
Phase C to A. Develops with prescribed grazing management and prescribed burning or fire.
Phase D to A. Usually results from prescribed grazing management and no fire.
Phase E to A. Develops from prescribed grazing management and prescribed burning or brush management.
Phase B to D. This develops from prescribed burning or fire.
Phase C to D. This develops from prescribed burning or fire.

State 1 Phase E to State 2, Phase A. Results from continued improper grazing management and no fire. This site has crossed the threshold. It is economically impractical to move this site back to State 1 with accelerated practices.

State 1 Phase D to State 2, Phase B. Develops through improper grazing management and lack of fire. This site has crossed the threshold. This site has crossed the threshold. It is economically impractical to move this site back to State 1 with accelerated practices.

State 1 Phase C to State 3. Results from improper grazing management and lack of fire. This site has crossed the threshold. It is economically impractical to move this site back to State 1 with accelerated practices.

State 2 Phase A to State 2 Phase B. Results from improper grazing management and fire.

State 2 Phase B to State 2 Phase A. Results from no fire.

State 2 to unknown site. Excessive soil loss and changes in the hydrologic cycle caused by improper grazing management and/or frequent fire cause this state to retrogress to a new site with reduced potential. It has crossed the threshold. It is economically impractical to move this site back to State 1 with accelerated practices.

State 3 to unknown site. Continued lack of fire and improper grazing management cause this state to retrogress to a new site with reduced potential due to significant soil loss and changes in hydrology. It has crossed the threshold. It is economically impractical to move this site back to State 1 with accelerated practices.

See **ESD**, pages 7-8.

53. The Shallow Claypan 12-16 ESD describes the Practice Limitations, as follows:

Practice Limitations.

> Due to the shallow soils and low available water capacity of the soils, severe limitations exist for range seeding and brush control on this site. Low potential production and value to wildlife must be considered if planning brush management.
>
> *See* **ESD**, page 7. In other words, the natural soil limitations of the Shallow Claypan 12-16 advise *against* seeding this ecological site.

54. **DISCUSSION OF ESD (LOAMY 13-16 PZ)**.

55. The Loamy 13-16 ESD states:

> The dominant visual aspect of this site is bluebunch wheatgrass, Idaho fescue and mountain big sagebrush. Composition by weight is approximately 55-65 percent grass, 10-20 percent forbs and 20-30 percent shrubs. Fire has historically occurred on the site at intervals of 20-50 years.
>
> The Historic Climax Plant Community (HCPC), the Reference State (State 1), moves through many phases depending on the natural and man-made forces that impact the community over time. State 1, described later, indicates some of these phases. The Reference Plant Community Phase is Phase A. This plant community is dominated by bluebunch wheatgrass, Idaho fescue and mountain big sagebrush. Antelope bitterbrush is a subdominant overstory species. Subdominant species include Sandberg bluegrass, bottlebrush squirreltail, arrowleaf balsamroot and lupine. The plant species composition of Phase A is listed later under "Reference Plant Community Phase Plant Species Composition".

See **ESD**, page 3. *See also* **ESD**, page 7, which states:

> **Plant Community Narrative:**
> State 1, reference State
> State 1, Phase A, Reference Plant Community Phase. This plant community has mountain big sagebrush in the overstory with bluebunch wheatgrass and Idaho fescue co-dominant in the understory. Other significant species in the plant community are Sandberg bluegrass, arrowleaf balsamroot and antelope bitterbrush. **Natural fire frequency is 20 to 50 years.**

Bold emphasis added.

56. The Loamy 13-16 ESD describes the historical hire interval and the Historic Climax Community (HCPC) as follows:

> Fire has historically occurred on the site at intervals of **20-50 years**.
>
> The Historic Climax Plant Community (HCPC), the Reference State (State 1), moves through many phases depending on the natural and man-made forces that impact the

community over time. State 1, described later, indicates some of these phases. The Reference Plant Community Phase is Phase A. This plant community is dominated by bluebunch wheatgrass, Idaho fescue and mountain big sagebrush. Antelope bitterbrush is a subdominant overstory species. Subdominant species include Sandberg bluegrass, bottlebrush squirreltail, arrowleaf balsamroot and lupine. The plant species composition of Phase A is listed later under "Reference Plant Community Phase Plant Species Composition".

Total annual production is 1100 pounds per acre (1232 kilograms per hectare) in a normal year. Production in a favorable year is 1400 pounds per acre (1568 kilograms per hectare). Production in an unfavorable year is 800 pounds per acre (896 kilograms per hectare. Structurally, cool season deep rooted perennial bunchgrasses are very dominant, followed by tall shrubs being more dominant than perennial forbs while shallow rooted bunchgrasses are subdominant.

See **ESD**, page 4 (bold emphasis added).

57. The Loamy 13-16 ESD reports the influence of a lack of fire, and of fire intervals shorter than 20-50 years, as follows:

Influence of fire:

In the absence of normal fire frequency, bitterbrush increases to the point of being co-dominant with mountain big sagebrush. Juniper can also increase if a seed source is in the proximity. Grasses and forbs decrease as shrubs increase. With the continued absence of fire, juniper can displace most of the shrubs and other understory species. See "Influence of juniper invasion" below.

When fires become more frequent than historic levels (**20-50 years**), **mountain big sagebrush and bitterbrush are reduced significantly**. With continued short fire frequency, **big sagebrush and bitterbrush can be completely eliminated along with many of the desirable understory species such as bluebunch wheatgrass and Idaho fescue.** These species **may be replaced by cheatgrass, Sandberg bluegrass and bulbous bluegrass** along with a variety of annual and perennial forbs **including noxious and invasive plants**.

See **ESD**, page 4 (bold emphasis added).

58. The Loamy 13-16 ESD describes five plant community States (including Seedings and an unknown new State)), and several Phases in the different States, including transition pathways, as follow:

State 1.
Phase A to B. Develops in the absence of fire. No juniper seed source present.

Phase A to C. Usually results from improper grazing management[9] and absence of fire. Juniper seed source is present.
Phase A to D. Results from one or more fires.
Phase A to E. Develops in the absence of fire. Juniper seed source is present.
Phase A to F. Results from improper grazing management and absence of fire. No juniper seed source is present.
Phase B to D. Results from prescribed burning or fire.
Phase C to A. Results from prescribed burning or fire and prescribed grazing.
Phase C to D. Results from prescribed burning or fire.
Phase D to A. Results with prescribed grazing and no fire.
Phase E to A. Results from prescribed burning or fire and prescribed grazing.
Phase E to D. Results from prescribed burning or fire.
Phase F to A. Results from brush management, no fire and prescribed grazing.
Phase F to D. Results from prescribed burning or fire.

State 1 Phase F to State 2 Phase A. Develops through improper grazing management and no fire. This site has crossed the threshold. It is economically impractical to return to state 1 with accelerated practices.

State 1 Phase C and E to State 3. Develops with no fire and improper grazing management. This site has crossed the threshold. It is economically impractical to return to state 1 with accelerated practices.

State 2. Phase A to B. Develops through improper grazing management with frequent fire.

State 2 to State 4. Brush management, pest management and/or prescribed fire are used prior to range seeding.

State 2 to unknown site. Excessive soil loss and changes in the hydrologic cycle caused by improper grazing management and/or frequent fire cause this state to retrogress to a new site with reduced potential. It has crossed the threshold. It is economically impractical to return the site to state 1 with accelerated practices.

State 3 to State 2 Phase B. Results from fire.

State 3 to State 4. Mechanical removal of juniper or catastrophic wildfire and/or pest management (disking) are needed prior to range seeding.

State 3 to unknown site. Continued lack of fire and improper grazing management cause this state to retrogress to a new site with reduced potential due to significant soil loss and changes in hydrology. It has crossed the threshold. It is uneconomical to return this site to state 1.

[9] See Comments regarding average utilization herein, regarding Appendix C of the Draft RHA.

See **ESD**, pages 6-7.

59. The Loamy 13-16 ESD describe the characteristic appearance of the site in different States and Phases, as follows:

Plant Community Narrative:

State 1, reference State

State 1, Phase A, Reference Plant Community Phase. This plant community has mountain big sagebrush in the overstory with bluebunch wheatgrass and Idaho fescue co-dominant in the understory. Other significant species in the plant community are Sandberg bluegrass, arrowleaf balsamroot and antelope bitterbrush. Natural fire frequency is 20 to 50 years.

State 1, Phase B. This plant community is dominated in the overstory by bitterbrush. Mountain big sagebrush is present. Bluebunch wheatgrass and Idaho fescue are co-dominant in the understory. Other perennial grasses and forbs include Sandberg bluegrass, bottlebrush squirreltail, arrowleaf balsamroot and lupine. No juniper seed source is present. This state has developed due to fire frequency being much longer than normal.

State 1, Phase C. This plant community is dominated by juniper and mountain big sagebrush in the overstory. Sandberg bluegrass is the dominant grass in the understory. Bluebunch wheatgrass and Idaho fescue are present but in reduced amounts and typically in low vigor. Antelope bitterbrush is still present but in reduced vigor and hedged. This state has developed due to improper grazing management and lack of fire. A juniper seed source is in the proximity.

State 1, Phase D. This plant community is co-dominated by bluebunch wheatgrass and Idaho fescue. Sandberg bluegrass and other perennial grasses and forbs are subdominant. Mountain big sagebrush and antelope bitterbrush have been significantly reduced. Rabbitbrush and western needlegrass may have increased. This plant community has developed due to one or more fires.

State 1, Phase E. This plant community is similar to Phase A except that juniper seedlings and saplings are invading the site due to a lack of fire. A juniper seed source is in the proximity. This state has developed due to the absence of fire.

State 1, Phase F. This plant community is dominated by mountain big sagebrush in the overstory. Sandberg bluegrass is the dominant grass in the understory. Bluebunch wheatgrass and Idaho fescue are present but in reduced amounts and typically in low vigor. Antelope bitterbrush is present in reduced amounts and hedged. This state has developed due to improper grazing management and a lack of fire. No juniper seed source is in the proximity.

State 2, Phase A. This plant community is dominated by mountain big sagebrush with annuals in the interspaces. Some soil loss has occurred. This site has crossed the threshold. It is economically impractical to return this state to State 1 with accelerated practices. This state has developed due to improper grazing management and the absence of fire.

State 2, Phase B. This plant community is dominated by Sandberg bluegrass and other annual and perennial grasses and forbs. Root sprouting shrubs such as green rabbitbrush and gray horsebrush are present. Some soil loss has occurred. This site has crossed the threshold. It is economically impractical to return this state to State 1 with accelerated practices. This state has developed due to frequent fires and improper grazing management.

State 3. This plant community is dominated by juniper. Remnants of bluebunch wheatgrass and Idaho fescue can be found in the understory. Shallow-rooted grasses, such as Sandberg bluegrass, and other annuals can be found in the interspaces. Few shrubs are present. Generally, shrub cover is below 12-13%, bare ground is above 27-28%, juniper cover is greater than 20% and infiltration less than 6 cm/hr. The site is near or has crossed the threshold to this state. It is economically impractical to return this site to State 1 with accelerated practices. Some soil loss has occurred. This state has developed in the absence of fire and improper grazing management.

State 4. Seeding. The seeding may be introduced species or it may be made up of native species that attempt to mimic State 1.

Unknown new site. This plant community has gone over the threshold to a new site. Site potential has been reduced. Significant soil loss has occurred. Infiltration has been reduced and run-off has become more rapid. This state has developed due to continued improper grazing management and/or frequent fires or the continued absence of fire where a juniper seed source is present. This unknown new site can be reached from State 3 with further dominance of the site by juniper. It is economically impractical to move this site back to State 1 with accelerated practices.

See **ESD**, pages 7-9.

60. The Loamy 13-16 ESD describes that there are no physical limitations to range seeding or brush management on this site. *See* **ESD**, page 7.

61. As can generally be seen from Comments 23 through 60, the higher the precipitation levels, the more "States" and "phases" that can occur. What is also obvious is that proper assessment of the Standards of Rangeland Health is not as simple as simply referring to "State 1, Phase A" (the pristine) to determine rangeland health. *See also* Comments 62 –68. Additionally, the more the state and phase are removed from the "reference state and phase", the less rational is the expectation to meet upland or sage-grouse habitat needs.

62. **Ecological Site Descriptions, Ecological Potential and the "Connelly 7-inch" stubble heights**.

63. Shallow Claypan 12 – 16 inch PZ (dominated by Artemisia arbuscula shrub cover) comprise significant portions of sage-grouse habitat that we have monitored. The primary deep-rooted grass species is Idaho fescue (though bluebunch wheatgrass may also occur).

64. IRC has had the benefit of conducting thousands of utilization studies in Idaho, Nevada, and Oregon, and it is the result of this monitoring that tells us that Idaho fescue may be culmed or culmless in its annual growth, and it rarely reaches 7 inches when culmless. In the Big Springs Allotment in the Owyhee Range of Idaho, between 2019 and 2023, ungrazed fescue on the transects was culmless 34 of 86 monitoring occurrences (40%), was predominantly culmed on 50 of the 86 occurrences (58%), and was about 50/50 culmed/culmless on 2 of the 86 occurrences (2%).

65. On the 36 occurrences that it was culmless or 50/50 with culmed individuals, Idaho fescue averaged:
    - 4 inches in four monitoring occurrences;
    - 5 inches in eight monitoring occurrences;
    - 6 inches in fifteen monitoring occurrences;
    - 7 inches in five monitoring occurrences, and;
    - 8 inches in three monitoring occurrences.

    Grazing to 7 inches of height in those three times that fescue grew to 8 inches, according to the Interagency Utilization Guage, would have allowed 2% utilization.

    Therefore, in these monitoring occurrences, Idaho fescue exceeded 7 inches eight percent of the occurrences, and the 7-inch "Connelly" stubble height would not have permitted grazing fourteen percent of the occurrences, and was beyond the ecological potential of the Shallow Claypan 12-16 on seventy-five percent of the occurrences.

    Leaving the rangelands ungrazed or used to as little as 2% utilization would not permit viable livestock operations to exist, and will add to fine-fuel accumulations. This should not be considered.

66. On the 52 occurrences that it was culmed or 50/50 with bluebunch wheatgrass, the ungrazed culms ranged from 14 inches to 24 inches, and grazing to 7-inch stubble height would have resulted in utilization of <u>7% at 14 inches ungrazed, to 15% at 24 inches ungrazed</u>.

67. Utilizing to such low use levels would render livestock operations untenable and infeasible.

68. Likewise, disallowing livestock use or restricting it to similar levels will have the added detriment of adding fine fuels to the rangeland, which will exacerbate wildfire occurrences and intensity.

69. With the above-reported field data (as well as discussion of Hausleitner et al. 2005, Holloran et al., 2005, and Hagen et al., 2007, we contend that Table 8.2.2 Idaho GRSG Habitat Indicators Table ≥7" stubble height for nesting/early brood rearing habitat indicator in the Idaho GRSG Habitat Indicators must be replaced with language from Alternative 2, "adequate residual nesting cover".

70. Heavy emphasis on vegetation height without a comprehensive explanation in the documentation of the numerous reasons for variation in vegetation height will single out livestock grazing as the single impact. This is not realistic or defensible and vegetation height is not an effective measurement for long term rangeland health. Grazing is but one of many factors influencing grass height with others including ecological site potential, precipitation, soil and ambient temperature. Set, pre-determined measurement standards should not be required but rather site-specific monitoring and adaptive management to leave an appropriate amount of growth on the ground at the right point in time. Annual variations, landscape variations, the technical intricacies of measuring stubble height, and other limitations make this standard a counterproductive way to address nesting cover.

71. Further, the 2024 Draft RMPA/EIS, Appendix 8 correctly provides "…with data collected during the appropriate corresponding seasonal use period, as applicable to address phenological changes." Nesting/Early Brood Rearing is defined as a seasonal use period of May 1 to June 30 to be adjusted by geographic region (Appendix 8, p. 8-4). This does not identify specifically when residual cover measurements should be taken, nor does it identify that different standards apply at different times. The Connelly reference for 7 inches is to be used post hatch, not at nest-initiation. See discussion above at ¶¶ 13 – 19.

72. While we support an adaptive management approach, the process as outlined in Chapter 2 causes more questions than answers and needs clarification. This lack of clarity will only serve to allow for multiple interpretations that allow the reader to apply it in accordance with personal biases as opposed to as intended for proper management.

73. Elsewhere in the 2024 Draft RMPA/EIS livestock grazing is appropriately addressed as a secondary threat and the need to determine causal factors of not meeting land health standards before grazing management changes are considered. The Adaptive Management sections in Chapter 2 seem to elevate livestock grazing to a primary threat level and require immediate changes to grazing management if soft or hard thresholds are met regardless of casual factors.

74. Where improper livestock grazing has been identified as a secondary threat to sage-grouse, we contend that the management of livestock grazing needs to be in accordance with 43 CFR.

75. If any adaptive management language needs to be in included in this 2024 Draft ARMPA/EIS, it should follow the language in the Idaho 2019 plan at MD LG 16:

> Adaptive Management changes related to existing grazing permits should be undertaken only where improper grazing is determined to be the causal factor in not meeting habitat characteristics, specific to site capability, based on monitoring, with appropriate spatial variability.

76. The language concerning Causal Factor Analysis (CFA) found on page 2-125 will cause unnecessary delays in the permit renewal and National Environmental Policy Act (NEPA) processes. There is no need for additional analysis of GRSG habitat beyond that required for the Special Status Species (SSS) sections of land health standards assessments. The inclusion of an additional CFA will only serve to delay already lengthy processes, further delaying the implementation of proper management regardless of the determination of causal factors in the LHA.

77. Inconclusive CFAs are also addressed on page 2-128 stating:

> If no cause for a habitat or population decline can be determined the BLM may consider implementing additional restriction on existing or new authorizations in the area, consistent with permits/surface use rights in coordination with the permit holder and the state wildlife management agency. This is to reduce disturbance until either a causal factor can be determined through additional monitoring and analyses, or the population declines cease.

However, this is inappropriate as related to livestock grazing, which has been determined to be a secondary threat to GRSG, when done improperly, and should not be the default causal factor when agency personnel cannot determine a causal factor.

78. Additionally on page 2-128, the 2024 Draft RMPA/EIS states:

> If habitat assessment determines the PHMA (and IHMA) influenced by the wildfire can no longer support GRSG populations at levels prior to the wildfire, new infrastructure projects or permits may be deferred if consistent with applicable law (such as the Mining Law of 1872), and valid existing right until as assessment demonstrates the habitat can support GRSG at the levels that existed prior to the wildfire even have been restored."

This, coupled with the language on 2-122:

> A hard or soft threshold can be reversed if restoration of sagebrush vegetation communities within the neighborhood cluster returns to the sagebrush conditions and/or habitat function prior to the events that resulted in meeting a habitat threshold."

has the potential to be interpreted to allow for the cancellation or modification of grazing permits after a wildfire event, not only the specific habitat affected, but potentially neighboring allotments as well (see also language on page 2-122). Which unjustly punishes livestock grazing, a secondary threat, for the damage caused by wildfire, a primary threat.

Also, it does not allow for a realistic timeline, nor the conditions needed, to reestablish a mature sagebrush stand after a catastrophic wildfire event. This language needs removed in entirety or at the least modified so that other land uses are not punished for the damage of wildfire events.

79. Lek Buffers and Required Design Features (RDF's).

80. We generally don't see the application of lek buffers to livestock grazing management as rational, since it is a secondary threat to GRSG – if done improperly.

81. Range Improvements and Supplemental Feeding.

82. Range improvements and supplemental feeding are critically important for achieve standards of rangeland health and for herd health. As noted in the 2024 Draft RMPA/EIS at 3-31:

> Across the planning area, grazing management has been improved by a variety of actions. One example is changing the terms and conditions in grazing permits/leases to improve riparian areas and wetlands through utilization, herding requirements, and strategic placement of salt and supplemental feed. (p.3-31).

However, without doubt, the same is true of dispersing (or concentrating) livestock across the rangeland by use of the current Range Improvements.

83. The 2024 Draft RMPA/EIS includes the following management action that we contend must be removed or revised:

> "Management Action RM-4: During the grazing authorization renewal process, evaluate all existing livestock management range improvements with respect to their effect on GRSG and GRSG habitat. Consider removal of modifications of projects that negatively affect GRSG or GRSG habitat. Functional projects needed for management of sensitive species habitat or other sensitive resources should be maintained by consider improving in a manner less impactful to GRSG." (Draft RMPA/EIS p. 2-109)

However, GRSG are not the only wildlife species, nor sensitive species, that BLM is mandated to manage. If BLM choses to manage "for" sage-grouse, it is choosing to manage "against" a number of other wildlife species.

84. The Final RMPA/EIS should also require a look at historical effects from range improvements as part of the decision-making process. For example, several of the highest attended leks in southern Idaho are located near livestock water troughs, associated with major pipeline systems. The location of many of these projects are the result of management of the landscape, providing benefits to livestock, wildlife, SSS and the resource as a whole. Locations of improvement projects are decided after careful consideration of contributing factors such as allotment boundaries, travel management plans, watershed specific concerns, soil type, etc. All these issues and more must be considered for proper management and

improvement of management practices at a landscape scale for the benefit of all those dependent on each individual ecosystem.

85. The Final RMPA/EIS must take into consideration the impact and usefulness in administering management of the allotment as a whole, not just the management of sensitive status species – and particularly only GRSG - as currently reflected in RM-4 as discussed above.

86. Appendix 15, 15.1.2, Best Management Practices (BMP) for Livestock Grazing Management.

87. In general, any "BMPs" that require removing troughs, or salt grounds, may very well be removing the reason that leks exist where they do.

88. Drought Management.

89. As with 43 CFR 4180, BLM already has sufficient ability to manage in the case of drought. *See* 43 C.F.R. 4110.3-3(b); 43 C.F.R. 4130.3-2(f). *See also* Instructional Memorandum IM 2013-094.

90. As stated at the beginning of these comments, any decision from this process should amend all plans to remove any elements as related to permitted livestock grazing, and to defer GRSG management to the BLM via continued implementation of 43 C.F.R. Part 4100, subpart 4180. Table 8-1 was intended to provide objectives for habitat conditions; however BLM has already imposed them as mandatory Terms and Conditions on clients of IRC, and they are unwarranted, impossible to achieve, and beyond the ecological capabilities of the plant species. See ¶¶ herein.

91. Indiscriminate Retirement of Grazing Privileges.

92. BLM utilizes the LUPA to arbitrarily retire grazing permits and leases. Specifically, the GRSG LUPA includes the following Management Action - (MA) which demonstrate these flaws / consequences:

> Management Action RM-7: At the time a permittee or lessee voluntarily relinquishes grazing preference and the associated authorization, the BLM will consider whether to offer the permit for re-authorization to other grazing applicants or if the public lands where that permitted use was authorized shall be used for other resource management objectives. This does not apply to or impact grazing preference transfers, which are addressed in 43 CFR 4110.2-3. (P.2-112)

93. This MA presupposes authority to relinquish or retire grazing permits within a designated grazing district. The USDI-Solicitor Memorandum dated May 13, 2003, clarified M-37008, in relation to retiring grazing permits. See https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37008.pdf (last checked on 6/7/2024). This Memorandum speaks for itself, but confirmed that:

> [a]ny decision to retire livestock grazing on federal lands is not permanent, unless made permanent through congressional action. Any such decision is subject to reconsideration and reversal during subsequent land use planning.

As applied here, it is our contention that this MA is contrary to the Solicitor's Memorandum, because the MA allows the BLM to consider and decide the effectiveness of any relinquishment or retirement via some non-congressional action process or some non-land use planning process. To this end, these MDs and MAs should be deleted, or in the alternative modified to conform to the Solicitor Memorandum dated May 13, 2003.

Once again, thank you for the opportunity to comment.

Sincerely,
Sent electronically
Robert N. Schweigert

June 13, 2024

ATTN: Sharif Branham, Assistant Director for Resources and Planning
LM Utah State Office
440 West 200 South #500
Salt Lake City, UT 84101.

submitted via email: BLM_HQ_GRSG_Planning@blm.gov

Re: HQ GRSG RMPA

Mr. Branham,

On behalf of The Cloud Foundation (TCF), a 501(c)3 nonprofit organization committed to protecting and preserving America's wild horses and burros on our public lands through education and advocacy, and our more than 500,000 supporters. We respectfully submit these comments for the Department of Interior's (DOI's) and Bureau of Land Management's (BLM's) *Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement* (EIS). I, along with TCF's board, staff, and supporters, enjoy and appreciate our public lands in large part due to America's cherished wild horses and burros "as an integral part of the natural system of the public lands" as DOI and BLM are *required* to treat them under the Wild, Free-Roaming Horses and Burros Act. We value their natural behaviors – their social bonds, herd dynamics, and individual personalities.

The Alternatives as outlined will negatively impact me, the TCF Board of Directors, and over half a million TCF supporters because it will, by definition, cause harm to the human environment:

> § 1508.14 Human environment. **Human environment shall be interpreted comprehensively to include** the natural and physical environment and **the relationship of people with that environment**. ...

The Interior Secretary is instructed by the Wild Free-Roaming Horses and Burros Act (WFRHBA) to consider wild free-roaming horses and burros "in the area where presently found, as an integral part of the natural system of the public lands." The Government Accounting Office (GAO) outlined in its 2008 report to Congress:

> "*the passage of the 1971 act changed the way BLM managed horses and burros on public lands. Rather than considering them as a feral species that caused damage to the rangeland**, the agencies had to change their mind-set to protect and manage the animals as an integral part of the ecosystem***." (GAO Report to Committee on Natural Resources, October 9, 2008)

The EIS fails to distinguish the BLM's legal mandate to protect wild horses and burros from the agency's discretion under the Taylor Grazing Act, which states clearly that "the creation of a grazing district or the issuance of a [grazing] permit….shall not create any right, title, interest, or estate in or to" the public lands.

The Interior Secretary is also instructed by the WFRHBA to consult with the NAS. The BLM-commissioned 2013 NAS report "Using Science to Improve the BLM Wild Horse and Burro

Program: A Way Forward" (NAS Report) (Attachment 1) states:

> "*Horse and burro management and control strategies cannot be based on biological or cost considerations alone; management should engage interested and affected parties and also be responsive to public attitudes and preferences*." p. 292
>
> "*Livestock grazing occurs on 160 million acres of land (65% of BLM land) with a maximum of 12.5 million AUMs of grazing authorized and 8.6 million AUMs used. By contrast, wild horses exist on 26.9 million acres of BLM land and are authorized 318,060 AUMs and are estimated to have used 447,689 AUMs**. Put another way, of forage allocated on BLM land to wild horses and livestock, wild horses account for just 5% of consumption, while livestock account for 95%***."

I. EIS ANALYSIS IS BIASED

The EIS makes sweeping biased statements based, not on site-specific data, but rather on limited journal articles that blame wild horses and burros for "reduced plant diversity, altered soil characteristics," etc. It goes on to make the assertion that this, "loss of scrub and grass cover can increase predation risk to nesting GRSG…Wild horses and burros also negatively impact important mesic areas that provide GRSG brood-rearing habitats … **Unlike domestic livestock there is little if any direct management of wild horses and burros, such as fencing, lease deferrals and pasture rest, potentially exacerbating their impacts on GRSG habitats at local scales."**

The EIS fails to consider that wild horses and burros are disproportionately being blamed for vegetative use. A study conducted by the independent organization Public Employees for Environmental Responsibility (PEER) found that BLM's "Sage Grouse Review Puts Thumb on Scale to Magnify Wild Horse and Burro Effects," and skewed its review to minimize impacts from domestic livestock (Attachment 2)– just as the EIS does. PEER documented, through BLM's report assessing the factors impacting Greater Sage-Grouse habitat, that the BLM's approach to range management targets scattered wild horses and burros while ignoring far more numerous private, commercial livestock. PEER based its finding on BLM's report assessing the factors influencing Greater Sage-Grouse habitat where the agency claimed that twice the area of sage grouse habitat is negatively impacted by wild horses and burros than the area negatively impacted by livestock. PEER's review of the BLM report concluded that the agency did not use the same approach for calculating the area of influence of livestock within BLM grazing allotments on sage grouse habitat as it did for wild horses and burros. If it had, then the area of influence for livestock would be roughly 14 times that given in the report and more than six times that of wild horses and burros. This PEER report in combination with Dr. Carter's research (Attachment 3) highlights the EIS fails to consider the true impacts of range use of livestock and is once again discrepantly targeting wild horses and burros for a problem caused largely by the BLM's livestock grazing program**.**

The EIS claims that, based on limited journal articles clearly biased against wild horses and burros and fail to provide equal analysis of the impacts of commercial livestock on the same public lands, **"Th*erefore, management of wild horses and burros at appropriate management levels is a key component for GRSG planning."*** And goes on to state, "***This planning effort considers not designating wild horse and burro Herd Management Areas in areas that overlap PHMA under Alternative 3.**."*

We support eliminating or limiting commercial, private livestock grazing on public lands to protect sage grouse. However, we strongly oppose removing or eliminating wild horses and burros on public lands where commercial livestock grazing continues to be permitted. Such a decision would not be based on science but rather on agency bias of politics. The National Research Council report (Attachment 4) highlighted that whether the BLM allocates AUMs to livestock or wild horses is based on preference and politics:

> *Biologically, the area may be able to support 500 cattle and 500 horses, and may be carrying them. But if the weight of public opinion calls for 1,000 horses, the area can be said in this context to have an excess of 500 cattle. For these reasons, the term excess has both biological and social components. In the above example, biological excess constitutes any number of animals, regardless of which class above 1,000. Social excess depends on management policies, legal issues, and prevailing public preference...*

The BLM routinely fails to distinguish between horse grazing and livestock grazing except to say that wild horses are on the range year-round whereas livestock is permitted to graze in the same area but moved around or permitted for "seasonal use." However, the intensive grazing permitted has proven to be detrimental to rangeland health. These permits authorize massive livestock grazing during the most sensitive growing season. In fact, this BLM livestock permits allow intensive grazing during the important Spring months specifically because most private landowners want to rest their private lands at that crucial time so that they are more productive. This practice of seasonal grazing and Spring turnout is known to decrease herbaceous cover for nesting sage-grouse.[1] "Indirect influences of livestock grazing and ranching on sage-grouse habitat include fencing, watering facilities, treatments to increase livestock forage, and targeted grazing to reduce fine fuels." *Ibid.* Allowing this intensive livestock grazing on our public rangelands in the early grazing season is documented to have lasting, year-round impacts on the range's ability to revitalize due to the overgrazing in the Spring months. Cattle are known to stay in one area unless physically moved to other areas – which compounds the negative environmental impact of cattle grazing. Yet, wild horses and burros are routinely removed from public lands to accommodate this BLM-favored livestock grazing. Wild horses are well documented for continuously moving on the range – unlike livestock, wild horses do not sleep in riparian areas and do not stay in one area; rather wild horses are known to have daily and seasonal movement patterns. Constantly on the move, wild horses do not have the same negative impacts as cattle.

II. EIS FAILS TO CONSIDER DATA THAT SHOWS WILD HORSE PRESENCE AND NUMBERS DOES NOT NEGATIVELY IMPACT SAGE GROUSE

U.S. Fish & Wildlife Service (USFWS) issued the findings of a study regarding the endangered nature of sage grouse in 2012. Dr. Jeff Manning, a former National Research Team Lead/Wildlife and Horse and Burro Specialists for BLM's Washington DC Office, gave a presentation at the BLM National Wild Horse and Burro Advisory Board meeting in March of 2013 in Oklahoma City, OK regarding wild horses and sage grouse. That presentation was approved by the APHIS veterinarian assigned to the BLM Wild Horse and Burro Program (Al Kane), the BLM Wild Horse and Burro Program Lead (Dean Bolstad) BLM Wild Horse and Burro

[1] Boyd, C.S., Beck, J.L. and Tanaka, J.A. 2014. Livestock Grazing and Sage-Grouse Habitat: Impacts and Opportunities, *Journal of Rangeland Applications*. 1, (Mar. 2014), 58-77.

Program Division Chief (Joan Guilfoyle) and other officials at BLM. At that meeting, Dr. Jeffrey Manning, who is trained in quantitative ecology, population biology, and fish and wildlife resources, stated that the USFWS identified habitat loss caused by the following factors as top threats to sage grouse:

- Energy development
- Transmission right of ways
- Fire
- Invasive species
- Commercial development

Dr. Manning's presentation, "Wild Horses and Factors Associated with Extirpation of Sage-Grouse: a Landscape Analysis" outlined 10 years of data showed that the density of wild horses in an HMA did not differ where grouse remained or were extirpated. Meaning an increased number of horses was not correlated with whether grouse remained or were extirpated. The USFWS's data showed that trends in horse populations were similar where sage were doing well as well as extirpated. Further, 10 years of data (2002-2012) showed that the proportion of years an HMA was above AML did not differ where grouse remained or were extirpated. "Greater Sage-Grouse: ecology and conservation of a landscape species and its habitats" (Wisdom, 2011) highlights the most impactful causes threatening the survival and wellbeing of sage grouse. This book outlines the important foundation for developing conservation strategies and actions and provides a comprehensive synthesis of scientific information on the biology and ecology of the Greater Sage-Grouse. Thirty-eight researchers' experiences are incorporated describing grouse population trends, its sagebrush habitat, and potential limitations to conservation, including the effects of rangeland fire, climate change, invasive plants, disease, and land uses such as energy development, grazing, and agriculture. Dr. Manning highlighted that (1) percent of sagebrush area, (2) elevation, (3) distance to transmission lines, (4) distance to cellular towers and (5) land ownership were the best discrimination points between extirpated and occupied ranges. His analysis of this data, overlapped with HMAs, found that models tested effects of 4 factors or separately those 4 factors and feral horse data on the probability of sage grouse becoming extirpated from an area. Dr. Manning told BLM, that the presence of a horse HMA did not improve model fit; in other words, the 4 factors presented by Wisdom et al. 2013 were the only factors important to the probability of sage grouse becoming extirpated from an area, not horses.

Dr. Manning further presented the data that the same comparison – the four contributing actors with and without horses but added a demographic metrics (meaning horses over AML or over AML for years) did not improve the result for the grouse (model fit). In other words, the 4 factors presented by Wisdom et al. 2013 were the only factors important to the probability of sage grouse becoming extirpated from sites.

The key points Dr. Manning delivered to BLM were:

1) horse demographics and management levels did not differ between areas where grouse are ok vs where they became extirpated.
2) Sage-grouse extirpation has occurred largely around the edges of the sage-grouse range, which is not uncommon in species experiencing broad-scale changes to habitat and environmental conditions along the fringe of their ranges (e.g., climate change, drought, habitat conversion, etc..).
3) A preponderance of horse HMAs occur in the core of the sage-grouse range, where grouse are not extirpated.

4) For these reasons, it does not appear that horses have contributed to the broad-scale patterns in grouse extirpation across their range. Thus, other factors likely drive sage-grouse extirpation.

To take the focus off the negative impacts of livestock, sympathizers with livestock grazing on public lands have increasingly turned their attention to wild horses and burros – animals perceived by public lands' livestock operators to be eating forage on public lands that could be consumed by private livestock to yield a financial profit for them. Many organizations, such as the Wildlife Society, have publicly stated their opposition to wild horses and their support for livestock grazing. Specifically, the Wildlife Society positions livestock grazing in the most favorable light possible (from an environmental or wildlife perspective) stating that livestock is "a management tool that can be used to alter rangeland vegetation to achieve specific objectives." Never highlighting that livestock are largely to blame for widespread environmental destruction both domestically and internationally – including the killing of tens of millions of native wildlife. Yet, the Wildlife Society turns around and describes wild horses as follows (taking a swipe at the WFRHBA):

"*Feral horses and burros are invasive species in North America. Exotic, non-native species are among the most widespread and serious threats to the integrity of native wildlife populations because they invade and degrade native ecosystems. When invasive species are perceived as a natural component of the environment, the general public may regard them as "natural," not understanding the damages they inflict on native systems*."

The Wildlife Society's political agenda has been highlighted by steadfast environmentalists, including Western Watersheds Project executive director Erik Molvar :

> *"As a wildlife biologist whose scientific findings on large herbivore ecology have been published in a number of peer-reviewed scientific journals, I believe the contention that wild horses are the major land health problem, rather than domestic livestock, is fake news."*
>
> *"I am a former member of The Wildlife Society, and it is deeply disturbing that this once-science-based organization is today articulating a position that is directly in opposition to scientific findings. Its propaganda video on this issue parrots the counterfactual assertions of the livestock industry, and in doing so, The Wildlife Society discredits itself as a science-based organization."*

The EIS relies heavily on Coates' 2021 article, "Sage-Grouse Population Dynamics are Adversely Affected by Overabundant Feral Horses," to justify removing, eliminating or reducing wild horse and burro numbers to AML. However, Coates states in his paper, "Our analysis did not explicitly model livestock (e.g., cattle) and large native ungulates as covariates, primarily because of challenges associated with compiling quality spatial data. We assumed that the amount of grazing pressure by these animals, particularly cattle, arises from the same distribution inside and outside areas occupied by free-roaming horses." Meaning they did not model the reduction or elimination of livestock grazing when determining whether wild horses needed to be reduced or removed. Coates writes, "We only expected competition for forage between cattle and horses, which primarily consume graminoids year-round …" Notably, Coates writes, "*Thus, our results should be interpreted as influences of %AMLmax given current AUMs allocated to cattle. Research that investigates the influences of reducing cattle AUMs (e.g., lessening cattle grazing pressure) on estimated changes in the effects of %AMLmax would be helpful*."

This is our point – removing livestock, even without reducing wild horses/burros to AML, would improve the outcome for sage-grouse. Alternative 3 should be amended to reflect this – that would eliminate the proposed action to reduce or eliminate wild horses/burros and would instead focus on the main culprit of the demise of sage grouse: livestock which directly contributes to the demise of grouse and its accompanying infrastructure (e.g. fencing, etc.) that indirectly contributes to the grouse's demise.

"*Livestock grazing affects over 60% of the world's agricultural lands and can influence rangeland ecosystem services and the quantity and quality of wildlife habitat, resulting in changes in biodiversity…. Grouse, as a suite of upland gamebirds, are often considered an umbrella species for other wildlife and thus used as indicators of rangeland health…. Our meta-analysis revealed an overall negative effect of livestock grazing on grouse populations. Perhaps more importantly, we identified an information void regarding the effects of livestock grazing on the majority of grouse species*."

"*Habitat loss and degradation have been identified as the primary threat to grouse (Storch, 2007, 2015) and intense livestock grazing has been implicated as a conservation threat for six of the seven grouse species that occupy rangeland habitats ('The IUCN Red List of Species. Version 2015-04', 2015)."*

Given the BLM's widespread use of public lands for the environmentally destructive extractive use of livestock grazing (livestock extract resources from public lands), it is imperative the EIS primarily focus on reducing or eliminating livestock grazing from public lands instead of scapegoating wild horses/burros. If livestock grazing is removed from public lands many of the indirect action associated with livestock grazing (fencing, etc.) can be removed from public lands benefiting not just sage grouse, but all wildlife. Predator killing programs could be ended – further contributing to achieving a thriving natural ecological balance (TNEB) which cannot be achieved without healthy predator populations.

Additionally, BLM must focus on widespread uses of public lands including but not limited to:

- off-road vehicle use (including ATVs, motorcycles, dirt bikes, and all motorized vehicles);
- mining and gas exploration and extraction activities;
- road and trail development; and
- hunting (surprisingly states still allow the killing of grouse claiming killing males will not negative impact populations).

Special attention must be given to the negative impacts that fencing poses for sage grouse given that fence posts are customarily used by predator birds (raptors, etc.) and inhibit sage grouse nesting and survival within a certain distance for all fencing.

Based on the science, The Cloud Foundation supports an amended Alternative 3 that includes the most rigorous restrictions on livestock grazing (including removal of fencing, etc. that is known to contribute to the demise of grouse) and urges the removal of language that indicates the elimination or reduction of wild horses/burros to AML. Removing livestock can achieve the same purpose to provide more plant cover for the grouse. We also urge Alternative 3 be amended to prohibit the use of fertility control that destroys or removes reproductive organs.

IV. EIS FAILS TO ANALYZE SCIENTIFIC LEGITIMACY OF BLM-CREATED AML SYSTEM

The notice for the EIS states, "BLM identified Alternative 5 as the preferred alternative in the Draft EIS."[2] Alternative 5 includes measures to keep wild horses and burros within the BLM-created "Arbitrary" Management Level (AML). Yet, the EIS fails to consider or analyze the basis for the decades-old AMLs it seeks to implement. Because the BLM has failed to disclose the scientific basis for AMLs and it is widely believed they were created arbitrarily to support the already existing livestock grazing. The EIS cannot implement an action without adequate analysis – analysis of the establishment of AMLs is necessary.

Given that the EIS Alternatives proposed actions affecting wild horses/burros are largely based on the BLM-created "Arbitrary" Management Level (AML) system, as a measurement to determine when wild horses are to be considered excess and subject to removal, the EIS must be amended to disclose and analyze the following:

- Data and science that is the basis for the AMLs (both for zeroed-out Herd Areas and HMAs) to determine the scientific basis and legitimacy of AMLs.
- Data and science for the AUMs allocated for livestock in all Herd Areas, including HMAs.
- Science and analysis undertaken to determine how to allocate AUMs for livestock vs. wild horses/burros within each Herd Area.

The above listed information is necessary to effectively determine which grazers are having the largest impact on sage grouse habitat – rather than simply scapegoating wild horses/burros who may, in fact, be the minority grazers and graze on a relatively small area of sage grouse habitat.

The EIS also fails to consider that BLM permits private livestock to graze on 155 million acres of the 245 million acres managed by the agency. That is 63%, or nearly 2 of every 3 acres is used for livestock. Wild horses, on the other hand, are relegated to just 26.9 million acres or just 11%. Even on this tiny portion of BLM-managed public lands that are Congressionally-designated for their use – wild horses are allocated less than 20% of the resource or AUMs.

Additionally, the BLM has systematically eliminated wild horses and burros from 37% of their original legally-designated Herd Areas – that is 15,522,299 acres of the original 42,440,065 acres[3] of BLM-managed public lands – more than 1/3 of the original herds have been wiped out by the very agency responsible for protecting these cherished animals.

A. EIS FAILS TO CONSIDER CURRENT CONDITIONS/USAGE

The EIS fails to provide sufficient data and analysis on how the BLM is *currently* managing the public lands that are legally designated as wild horse and burro Herd Areas – which includes zeroed-out Herd Areas and HMAs. The EIS currently fails to conduct adequate analysis on the proposed Alternatives and must be amended to disclose and analyze for ALL HERD AREAS THE FOLLOWING DATA:

- the number of permitted AUMs for livestock;
- the AUM *actual use* by livestock for each of the past 10 years;
- the number of AUMs permitted to wild horses and/or burros;
- the AUM *actual use* used by wild horses and/or burros for each of the past 10 years.

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[2] All Alternatives are tied to AML except those Alternatives (e.g. 3) that seek to zero out wild horses/burros completely.

[3] BLM Herd Area and Herd Management Area Statistics, March 1, 2024

This data is necessary for adequate analysis of the impacts of livestock vs. wild horses/burros. The EIS outlines alternatives that include the removal of wild horses/burros to AML or the total elimination of wild horses/burros in certain areas. However, the EIS fails to consider data or criteria to know which species should be removed and to what extent. For example, if BLM permitted annually 800 AUMs for cow/calf pairs in an HMA where only 200 AUMs were the AML for wild horses, but wild horses were utilizing 400 AUMs – based on the flawed EIS, BLM would remove half the wild horses and the 800 cows might be permitted to continue to graze on the public lands. This would (1) not be in conformance with the WFRHBA; (2) it would be biased scapegoating of wild horses/burros for negative environmental impacts caused by livestock; and (3) it will likely not achieve the objective of saving sage grouse.

As discussed above, Dr. Manning's study showed that there was no difference between the rangeland health where there were horses and the sage grouse were thriving vs those areas where they were gone. This exemplifies that wild horses played little to no part in the fate of the sage grouse.

It is essential the EIS conform with the WFRHBA and be instructive to remove commercial livestock partially or entirely *prior* to the removal of wild horses and burros. Under the current inadequate EIS, the agency could again arbitrarily determine wild horses/burros need to be removed while simultaneously permitting commercial livestock to be added to the range only further proving the agency's bias discussed below. Only when all livestock grazing is permanently eliminated in a Herd Area should wild horses and/or burros be considered for elimination; this is because wild horses and burros are to be considered "as an **integral part of the natural system** of the public lands."

V. EIS FAILS TO ANALYZE OUTDATED AUM METHOLDOGY IT IMPLEMENTS

The EIS implicitly adopts the outdated and unscientific AUM system that BLM uses which continues to use the outdated 1,000 lb cow measurement that was established prior to the 1980's; it is well documented cattle are bred at least 20% larger today. (Attachment 3) The AUM system used in by BLM to permit livestock numbers to graze on public lands has not kept pace with recent dramatic increases in average weight and size of cattle due to advances in veterinary medicine and animal husbandry. These larger cattle consume significantly more in forage and water resources per capita than did their ancestors of just a quarter century ago.

Modern-day cattle have been bred to become increasingly large over the decades since the AUM system was first created. The BLM must consider the size/weight of today's cows compared to the current (and outdated) AUM allocation. (Attachments 5-6)

Dr. John Carter, range specialist and Utah Director for the Western Watersheds Project, outlines that, " ***BLM and the Forest Service are generally underestimating forage consumption for a cow/calf pair by 732 lb/month, or nearly 50%. To account for this in grazing permits and annual billings, stocking rates must be reduced by a corresponding amount.***" (Attachment 3)

For years, independent organizations, which have no ties to wild horse advocacy, have called out the BLM bias favoring commercial livestock and against wild horses:

"*The method used by the U.S. Bureau of Land Management to assess range conditions*

> *is* ***seriously skewed toward minimizing impacts from domestic livestock and magnifying those from wild horses and burros, according to an appraisal by Public Employees for Environmental Responsibility (PEER*****).***" (Attachment 7)

Peer wrote a letter to Secretary Haaland outlined the independent group's concern regarding "the failure of BLM to apply available data about the growing adverse environmental impacts of the vast public land livestock program to land management decision-making…" The letter stated, "While wild horses certainly impact sage grouse habitat, to focus conservation efforts for this habitat on addressing impacts made by thousands of wild horses, while ignoring troves of data on the impacts from millions of cattle, undermines your efforts to create a culture of scientific integrity at DOI." (Attachment 7) PEER conducted analysis of allotment land health standards assessment status based on BLM land health standards assessment datasets highlighting that "BLM's records reveal that most of the allotments within HMAs that fail land health standards identify livestock grazing as a significant cause of degradation of land health…" And that "Livestock is by far the most frequently identified cause of allotment failure to meet fundamental land health standards nationwide, and for allotments within HMAs." (Attachment 8)

BLM is documented to have an agency bias which disproportionately weights wild horse impacts to the range more heavily than livestock impacts.

The understatement of forage consumption by livestock results in overstocking of allotments causing livestock damage to the range and then BLM turns around to blame wild horses/burros for overgrazing. Modern-day cattle have been bred to become increasingly large over the decades since the AUM system was first created. The BLM must consider the size/weight of cows compared to the current AUM allocation. (Attachments 3, 5-6)

The EIS must provide scientific data that shows the removal of livestock could not achieve the same objective. Merely claiming seasonal usage as an excuse to allow livestock grazing over wild horse usage is not sufficient. It is legally established that the BLM has no authority to remove horses merely to achieve AML. Other determinations must be made before wild horses can be removed. It is well documented that there is no greater threat to sage grouse than the extensive livestock grazing authorized by BLM in these same areas as documented above.

VI. EIS MUST ANALYZE WIDESPREAD NEGATIVE ENVIRONMENTAL IMPACTS OF LIVESTOCK GRAZING

The EIS must consider the plethora of data that highlights the negative environmental impacts that result from livestock grazing. "*The livestock sector emerges as one of the top two or three most significant contributors to the most serious environmental problems, at every scale from local to global. The findings of this report suggest that it should be a major policy focus when dealing with problems of land degradation, climate change and air pollution, water shortage and water pollution and loss of biodiversity*." (Attachments 9) Additionally, the EIS must consider that, "Livestock is by far the most frequently identified cause of allotment failure to meet fundamental land health standards nation-wide, and for allotments within HMAs." (Attachment 8) The Interior Department has been provided data that highlights, "the failure of BLM to apply available data about the growing adverse environmental impacts of the vast public land livestock program to land management decision-making." (Attachment 7)

"Cutting methane is the strongest lever we have to slow climate change over the next 25 years," according to the United Nations.

"Methane has more than 80 times the warming power of carbon dioxide ... Even though CO_2 has a longer-lasting effect, methane sets the pace for warming in the near term. At least 25% of today's warming is driven by methane from human actions."

Reducing methane emissions could provide the quickest win in the fight against climate change which is negatively impacting sage grouse habitat. Without decreasing methane emissions, the sage grouse and many other species cannot be saved.

Livestock and animal agriculture are major contributors of methane emissions representing roughly 32% of all methane emissions. Cows and sheep are permitted to graze on hundreds of millions of acres of American public lands. Ruminants - animals with a multi-chamber stomach (one chamber of which is the rumen) that regurgitates and masticates its food after swallowing. Ruminants include **cattle, sheep,** goats, buffalo, deer, elk, giraffes and camels.

Cows and sheep, like all ruminants, produce far more methane emissions than horses or burros. Cows produce 5 times more methane than horses. A cow will produce approximately 220 pounds of methane per year compared to a horse which produces up to 45.5 pounds of methane.

Methane from cattle is shorter lived than carbon dioxide but 28 times more potent in warming the atmosphere which is effectively climate change. This means reducing **methane** emissions would have **short-term effects** on slowing or reversing climate change; whereas carbon dioxide emissions reduction would take longer to have any beneficial effect because the life of carbon dioxide is longer lived.

While the agency may not be legally required to look at data provided via internet links (as above), a good faith review of existing data would require DOI/BLM to consider *all* information to make the best decision based on science and not politics.

In addition to excessive methane emissions, it is well documented that there is no greater threat to the range than the extensive livestock grazing authorized by BLM in this same area. (Attachment 10)

The EIS must take a hard look at eliminating or greatly reducing livestock grazing in the target areas, including zeroed-out Herd Areas, pursuant to 43 C.F.R. 4710.5(a), to accommodate wild horses/burros. Please note that it is not sufficient to dismiss this alternative by claiming that BLM utilizes this authority only in emergency situations, as nothing in the statute restricts the BLM's authority in this regard to emergency situations.

VII. EIS ALTERNATIVES INCLUDE PERMANENT STERLIZATION WHICH DESTROYS NATURAL BEHAVIORS

Alternatives 4, 5, and 6 include managing wild horses as “non-reproducing, or partially non-reproducing herds” which includes the destruction of reproductive organs (ovaries or testes) to achieve permanent sterilization. However, the destruction of ovaries or testes is documented to destroy natural behaviors. The NAS addressed this issue and determined that "*preserving natural behaviors is an important criterion*" for wild horse management. Therefore, the following

should be precluded from management actions:

- any fertility control (e.g., Gonacon) or surgery that alters the production of natural hormones or destroys the ovaries or testes;
- sex ratio skewing which causes stallion aggression due to the unnatural ratio of males to females;

In 1971, Congress unanimously passed the WFRHBA. It was not called the "American Horses and Burros Act" for a reason. The word "Wild" has distinct meaning, especially when it comes to wild horses.

"*Wild animal means any animal which is now or historically has been found in the wild, or in the wild state, within the boundaries of the United States, its territories, or possessions… Wild state means living in its original, natural condition; not domesticated*" (https://www.animal-ethics.org/introduction-to-the-legal-consideration-of-wild-animals-in-the-united-states/) [9 C.F.R. § 1.1; see also I.C. 14-8-2-318 "Wild animal", and I.C. 14-22-34-6 "Wildlife"; M.I. ST 324.43901 "definitions"; M.N. ST § 97A.015; N.V. ST 501.097; N.M. ST § 17-2-38; N.C. ST § 113-331; T.X. PARKS & WILD § 1.101.]

"Original, natural condition" implies unaltered by sterilization or fertility control that would change the animals' natural, wild behaviors. These wild behaviors are the basis for the rich and complex natural social structure of wild horses. Without them, the BLM would just be managing "free-roaming" horses. Free-roaming simply means the animals are free to move about at will, and could include castrated or sterilized domestic horses. The fact that Congress titled the Act with both words, "Wild" and "Free-Roaming" is a clear indication that they are separate but equally important concepts, and the BLM must treat them as such.

The BLM contention that, "*BLM is not required to manage populations of wild horses in a manner that ensures that any given individual maintains its social standing within any given harem or band*" is in direct violation of the WHA and Congress' intent to preserve and protect America's ***wild*** horses.

A. EIS Authorizes and Fails to Take a Hard Look at Gonacon and Un-Specified Fertility Control

The EIS fails to consider the NAS recommendation regarding Gonacon. The NAS specifically addressed Gonacon on page 149 (Attachment 1):

"*Thus, to the extent that Gonacon **preserves natural behavior patterns** while effectively preventing reproduction, it is a promising candidate as a female-directed fertility-control method. **However, further studies of its behavioral effects are needed***."

To date, no studies have been conducted to determine the behavioral effects on wild horses.

The BLM regularly claims, "GonaCon-Equine can safely be reapplied as necessary to control the population growth rate….Although the exact timing for the return to fertility in mares boosted more than once with GonaCon-Equine has not been quantified." Yet, the EIS authorizes unlimited applications of Gonacon. The EIS fails to provide any data that shows that repeated reapplication is safe – the reason that data is not provided is because it does not exist.

The EIS fails to adequately analyze the effects of Gonacon which effectively destroys the ovary and/or ovary function. The intention of Gonacon is to shrink the ovaries and effectively destroy

them. The scientific data demonstrates that Gonacon will negatively impact wild horses – both physiologically and psychologically. The EIS fails to address whether Gonacon destroys natural "wild" horse behaviors and fails to follow the NAS recommended that such wild behaviors should be preserved and that Gonacon should not be used in situ until such data showing Gonacon does not destroy natural wild behaviors. Merely claiming that "free-ranging" behaviors are maintained are not the "wild" behaviors that differentiate wild horses from their domestic cousins. More on this below.

Behavioral endocrinology is the scientific study of the interaction between hormones and behavior. Biologically speaking, hormones change cellular function and affect behaviors. Hormones achieve this by affecting individuals' sensory systems, central integrators, and/or peripheral effectors. Hormones are chemical messengers that influence the nervous system to regulate the physiology and behavior of individuals. (Attachment 11) The natural "wild" behaviors of wild horses are largely dependent on the natural production of hormones.

Just as ovariectomy removes the ovaries, thereby destroying natural hormone production (Attachment 12), Gonacon acts as a "chemical" ovariectomy because it has a similar effect through the reduced functionality or destruction of the ovaries and/or the function of the ovaries.

Gonacon is specifically designed to shut down and destroy the ovaries, which in turn destroys natural hormone production necessary for the natural "wild" behaviors. Gonacon is designed to permanently sterilize mares with a few applications.

The USGS researcher, Dr. Holyoak, highlights the effect of Gonacon and its potential use, noting a significant difference in responsibility between managing feral horses and managing wild horses. "The IUD, if administered to the original mustang pools, will **maintain their genetic line** while a product like Gonacon EQ can be used to shut down the reproductive cycle of abandoned feral horses." (Attachment 13) This makes clear the permanent sterilization impacts intended by using Gonacon.

Gonacon literally shuts down a mare's estrus cycle destroying the natural production of hormones which are known to have behavioral consequences; with repeated application, Gonacon is akin to a chemical ovariectomy. Based on the BLM's mandate to implement actions based on science and data, Gonacon should not be included in the Alternative proposed actions.

Again, data shows that Gonacon is designed to literally destroy the ovaries via injection of the substance, thereby shutting down a mare's estrus cycle and destroying the natural production of hormones which are known to have behavior consequences.

Much like castration to males, Gonacon shuts down the natural production of hormones, causing changes to wild horses' natural behaviors including:

- behavioral disruption of social structure and band integrity
- physiological disruption of hormones that play a vital role in survival ability in the harsh and rugged wild environments
- environmental impacts caused by sterilization procedures which may alter the way horses utilize the land

The EIS must address that the WHA requires BLM to manage wild horses and burros in a manner that protects their wild and free-roaming behavior.

While Section 3(b)(1) as modified by the Public Rangelands Improvement Act of 1978, outlines options for population management that include sterilization, it is to be read with (not in substitute of) the overarching intent of the WHA: to protect wild horses. In addition, the Act directs BLM to work with independent experts such as the NAS which has clearly stated the importance of preserving natural wild behaviors in all management actions:

> "*A potential disadvantage of both surgical and chemical castration is loss of testosterone and consequent reduction in or complete loss of male-type behaviors necessary for maintenance of social organization, band integrity, and expression of a natural behavior repertoire*."

The same need to preserve behaviors necessary for the maintenance of social organization, band integrity, and expression of natural behaviors applies to mares. Gonacon research in other species highlights, "there are potentially large ecological effects—such as changes to natural selection, effects on social structures and reproductive behavior, timing of mating and birthing seasons, changes to longevity, and effects on migratory or movement patterns—that still need to be examined in free-ranging populations prior to use as a management tool." (Attachments 14-15)

It appears from the limited studies of the application of Gonacon to wild mares (Theodore Roosevelt National Park) that social behaviors were defined as "herding, reproduction, agonism, harem-tending, and harem-social behavior" and "harem-social (e.g., allogrooming, pair-bonding, female-female urine marking), harem-tending (e.g. stallion defense of a band female or recruitment of a new female into the band), herding (e.g., driving or snaking behavior by the stallion), interaction-with-humans." (Attachment 16) These identified social behavior categories are inadequate for determining the behavioral impacts that relate to inter-horse bonds, individual bonds with the band, social status within the band, survivability behaviors necessary to thrive during inclement weather, etc.

These studies did not identify lead mares or distinguish whether individual horse behaviors and/or personalities were altered due to the treatment. Behavioral observation for studies conducted in the Theodore Roosevelt National Park was conducted for three to four months (April-July/August 2009 and 2010) and five months (March-July, 2014). Roundups occurred in 2009 and 2013. If human studies on behavior changes were done with a similar behavioral protocol, people suffering from mental illness would never be identified as long as they continued to groom, interact with other people, had sex, slept, etc. Clearly, behavioral changes which could negatively impact a mare's standing with the herd or her bonds with other members of the herd would not be captured through this methodology.

Gonacon shuts down estrus cycles in mares and impacts the production of various natural hormones. Gonadotropin-releasing hormone (GnRH) suppression, whether by agonist, antagonist, or vaccine has been based on the disruption of regulatory feedback between gonads and the pituitary, which, in turn, disrupts reproductive function (Dawson et al. 2006). The hypothalamus secretes GnRH, which, in turn, stimulates the release of the gonadotropin follicle-stimulating hormone (FSH) and luteinizing hormone (LH) from the anterior pituitary. FSH causes follicular growth and elevated estrogen secretion from the ovary, and LH causes ovulation, luteinization, and elevated progesterone levels. Both estrogen and progesterone have far-reaching biological actions not only for successful reproduction but also provide feedback upon behavioral platforms in the brain, causing important reproductive behaviors to occur. In most mammals, the pituitary gland secretes factors into the blood that act on the endocrine glands to either increase or decrease hormone production. This is referred to as a feedback loop, and it

involves communication from the brain to the pituitary to an endocrine gland and back to the brain. This system is very important for the activation and control of basic behavioral activities, such as sex; emotion; responses to stress; eating, drinking, and the regulation of body functions, including growth, reproduction, energy use, and metabolism. [Society for Neuroscience, Hormones: Communication between the Brain and the Body, 2012].

"*In the US, these vaccines are not commercially available, leading Donovan et al. (2013) to instead test a commercially available canine GnRH in mares. The findings of that study revealed the vaccine inhibited ovarian function, but also altered reproductive behaviours that are integral to the maintenance of the complex social structure of herd animals such as horses*." (Attachment 17)

Commercial vaccines that have been tested in mares include Equity, Improvac, and Gonacon. The inhibition of GnRH will cause an absence of FSH and failure of follicular development (Checura et al. 2009), and ovulation failure. *Ibid.*

The Baker 2018 study (Attachment 16) claims, "We found this vaccine to be safe for pregnant females and neonates." Yet, it is documented that Gonacon use in pregnant mares in the first trimester (and possibly further) may cause abortion. Baker, DL (2018) also states, "inoculation with Gonacon-Equine vaccine, during approximately the second trimester of pregnancy, does not affect the existing pregnancy of treated females or neonatal health and survival" and "revaccination could be applied to pregnant mares, during mid-gestation, without risk to the existing pregnancy." However, the key is "during mid-gestation," supporting other data that Gonacon causes abortions if administered prior to "mid-gestation." Again, Baker (2018) can only summarize its data on neonate safety "when applied at approximately mid-gestation."

Based on Baker, DL (2018) data, mares treated with one application of Gonacon experienced a 30% reduction in foaling in the first year of results; a 22% reduction in the second year, and no reduction in the third year. "Gonacon is one of the rare exceptions among animal vaccines in that the formulation initiates high antibody titers that remain elevated in some individuals after a single-injection; however, little research has been conducted to evaluate booster doses of this vaccine in any free-ranging wild ungulate [17, 24] or domestic species." The second treatment in 2013 resulted in no foals for all treated mares, 4 foals for treated mares in 2016, and 1 foal for treated mares in 2017. This highlights the high uncertainty of permanent or long-term sterilization impacts and efficacy with more than one application/multiple uses of Gonacon.

The BLM-funded research conducted by Dr. Baker available to BLM/USFS shows 10 years *after* receiving only two injections of GonaCon most mares remained sterile; there is no data to show that the majority of mares will return to fertility after just **two injections of GonaCon.** Dr. Baker wrote in his 2023 paper, "During the available study period [10 years], a definitive time frame of **reversibility was not determined for any reimmunization treatment**." (Attachment 18) Dr. Baker's 10-year study shows that with just two applications over a **10-year period reversibility could not be determined.** After the second shot, Baker reports reversibility in 25 of 62 mares over a 10-year period – that means 37 mares did **not** return to fertility after 10 years. Ibid.

BLM shut down this research before Gonacon's permanent sterilization could be documented by the researcher. Based on BLM's action, the long-term sterilization or efficacy remains unknown and the deleterious effects of more than 3 applications remains unknown. Cancellation of this research was intentional and, especially given the relatively low cost of this research, calls into question the BLM motives.

Based on available data, Gonacon may not be reversible after just two injections depending on when the injections are administered. No studies have been conducted for more than three applications.

The side effects of Gonacon on wild mares are equally uncertain; Baker, DL (2018) references two unpublished citations which were also authored by Dr. Baker, "Evaluation of biological side effects has been reported for numerous wild ungulate species including white-tailed deer [13, 34], elk [15, 16, 35], feral pigs [36], bison [21], and free-ranging horses [17, 24]." Baker, DK (2018) claim that Gonacon "does not significantly change social behaviors [37]" relies on Ransom, J (2014) which narrowly defined social behaviors as "associated with herding, harem-tending, reproduction, and agonism from stallions toward females." So Baker, DL (2018) claims that, "A summary of results from these investigations indicate that Gonacon is reversible, safe for use in pregnant females, does not significantly change social behaviors [37]" are highly questionable because reversibility after more than one application has not been established, safety during the first trimester and possibly later has not been established, and changes to social behaviors have not been adequately studied due to the narrow identification of social behaviors.

Gonacon remains an experimental drug that should not be used outside a tightly controlled study and as Baker (2018) states, "*additional research is needed to complete the objectives of this study including 1) to define the duration of effective contraception post-re-vaccination, 2) to determine if long-term or permanent infertility is a possible outcome, and 3) to assess if return to fertility (if it occurs) results in altered birth phenology of treated mares*."

Other findings have revealed that Gonacon "*altered reproductive behaviours that are integral to the maintenance of the complex social structure of herd animals such as horses*." (Attachment 17)

The EIS authorizes use of Gonacon without sufficient data that shows it is safe, reversible or conforms with the WFRHBA which seeks to protect "wild" horses.

VIII. EIS MUST TAKE A HARD LOOK AT BENEFITS OF WILD HORSES/BURROS ON DESERT ENVIRONMENT

The EIS must acknowledge the important role that wild horses/burros play as a flagship species. They are described as "ecosystem engineers," as they provide hydration for dozens of animal species, from badgers to elf owls to toads in desert environments including Lake Mead as outlined in *Science* magazine (Attachments 19-20). The authors found that the animals use their hooves to dig more than six feet deep to reach groundwater for themselves, in turn creating oases that serve as a boon to wildlife—American badgers, black bears, and an array of birds, including some declining species such as elf owls. The April 2021 *Science* paper (Attachment 19) states:

> ***"Megafauna play important roles in the biosphere, yet little is known about how they shape dryland ecosystems.*** *We report on an overlooked form of ecosystem engineering by donkeys and horses****. In the deserts of North America, digging of ≤2-meter wells to groundwater by feral equids increased the density of water features, reduced distances between waters, and, at times, provided the only water present. Vertebrate richness and activity were higher at equid wells than at adjacent dry sites, and, by mimicking flood disturbance, equid***

> ***wells became nurseries for riparian trees.*** *Our results suggest that equids, even those that are introduced or feral, are able to buffer water availability, which may increase resilience to ongoing human-caused aridification."*

As the National Geographic article states:

> *Wayne Linklater, a wildlife biologist and chair of the environmental studies department at California State University, Sacramento, agrees that the study invites a new look at such species. "Even though they are introduced, they are performing a really important ecological function," Linklater says, and yet the BLM wants to reduce their numbers.*
>
> *"This paper is very challenging to those traditional conservationists," he says, "who want to see all introduced species as somehow invasive and alien."*

IX. EIS MUST TAKE A HARD LOOK AT APPLICABLE STATUTES AND LAWS

BLM claims it strives to manage for "balanced use" as a part of its multiple-use sustained yield mandate. Clearly, based on the AUM allocations within each HMA and HA, no such balance exists. The EIS must fully analyze the following applicable statutes and laws.

A. 1971 Wild, Free-Roaming Horses and Burros Act (Act): "Range" Is "Devoted Principally" for Wild Horse Use

Congress clearly outlined in the Act that wild horses and burros have a special, protected status. The Act specifically identifies the "range" where wild horses and burros were presently found (in 1971) is defined as "the land necessary to sustain an existing herd or herds of wild free-roaming horses." The Act clearly states this wild horse habitat "*is devoted principally* but not necessarily exclusively to their [wild horses and burros] welfare..." [Public Law 92-195 § 1332]

Congress' usage of the word "is" clearly indicates Congressional intention, which does not grant BLM any discretion in whether the public lands should be devoted principally for wild horses and/or burros. Had Congress wanted to provide BLM with discretion, the word "may" would have been used. Again, the clear language of the Act leaves no possible ambiguity of Congress' intent, that wild horses and burros "are to be considered in the area where presently found, ***as an integral part of the natural system of the public lands***."

"If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, 467 U.S. 837, 842–43 (1984).

BLM's regulations state that "wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans." [43 CFR 4700.0-6][4]

[4] 43 CFR 4700.0-6 Policy (a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat. (b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans. (c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior.

Clearly, Congress' intent was that livestock use of wild horse and burro habitat should not be the guiding force behind wild horse management. Livestock grazing in the HMAs existed at the time the Act was unanimously passed by Congress. Livestock grazing has created this conflict with wild horses and burros because it is well established that if there were no livestock grazing in the HMAs, the range could accommodate wild horses and burros above high AML; the Act clearly outlines that wild horses and burros should be the ***principal*** users of these specific public lands that Congress designated as wild horse and burro habitat. If there is a conflict between livestock and wild horse/burro usage, based on the law as written, private livestock must be the first use to be reduced or eliminated from our public lands.

Additionally, Congress was also clear in its requirement that "All management activities shall be at the minimal feasible level..." Obviously, eliminating all wild horses or burros and implementing sterilization that will destroy natural behaviors are not "minimal" management actions. Nothing could be more extreme than eliminating all wild horses/burros or destroying their natural wild behaviors – the behavioral characteristic which qualifies them for protection under the Act.

B. Federal Land Policy and Management Act of 1976 (FLPMA)

FLPMA requires that BLM "balance wild horse and burro use with other resources" which equates *at minimum* to a 50-50 allocation of available forage between horses and livestock in HMAs. FLPMA requires that:

"(c) . . . consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output."

The intrinsic value of wild horses and burros falls under the non-market definition specified by both laws.

Sec. 302 of FLPMA states:

"(a) The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law," [43 U.S.C. 1732] and Sec. 102 "(b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law" [43 U.S.C. 1701]

In addition, FLPMA requires the public lands to be administered for "multiple-use," which Congress defined as:

"the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people . . . with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." [43 U.S.C. § 1702(c)].

While commercial livestock grazing is permitted on public lands, it is not a requirement under

the agency's multiple-use mandate as outlined in the Federal Land Policy and Management Act of 1976 (FLPMA). Indeed, public land grazing is a privilege and not a right, and the BLM is mandated by law to protect wild horses and burros.

Grazing on public lands is a privilege, and not a right See 43 U.S.C. § 315b & 16 (1943 Taylor Grazing Act, stating that grazing preferences "shall not create any right, title, interest, or estate in or to the lands" belonging to the U.S. Government); 43 U.S.C. § 580l (FLPMA similar provision); Omaechevarria v. Idaho, 246 U.S. 343, 352 (1918) ("Congress has not conferred upon citizens the right to graze stock upon the public lands. The government has merely suffered the lands to be so used"); U.S. v. Fuller, 409 U.S. 488, 494 (1973) (grazing permittee does not acquire a property interest in grazing permit); Swim v. Bergland, 696 F.2d 712, 719 (9th Cir. 1983) ("license to graze on public lands has always been a revocable privilege"); Osborne v. United States, 145 F.2d 892, 896 (9th Cir. 1944) ("it has always been the intention and policy of the government to regard the use of its public lands for stock grazing. . . as a privilege which is withdrawable at any time for any use by the sovereign without the payment of compensation"); Diamond Bar Cattle Co. v. U.S.A., 168 F.3d 1209, 1217 (10th Cir. 1998) (permittees "do not now hold and have never held a vested private property right to graze cattle on federal public lands"); Alves v. U.S., 133 F.3d 1454 (Fed. Cir. 1998) (holding that neither grazing permit nor preference is a compensable property interest).

C. Taylor Grazing Act (TGA)

The TGA provides the government broad discretion to decide whether to allow livestock owners to use the public lands i.e., the issuance of a grazing permit does not confer any entitlement or right to use the public lands; rather, it is a privilege that can be taken away, if necessary, to protect the health of the range and even if necessary, to protect the wild horses or burros. See 43 U.S.C. § 315b (BLM, is "authorized" to issue permits for the grazing of livestock on public lands "upon the payment . . .of reasonable fees"); id. ("the creation of a grazing district or the issuance of a [grazing] permit . . . shall not create any right, title, interest, or estate in or to" these public lands. Id. (emphasis added). Indeed, the TGA also provides that the Secretary "is authorized, in his discretion, to . . . classify any lands within a grazing district, which are . . . more valuable or suitable for any other use," 43 U.S.C. § 315f, including use by wild horses and burros that are required to be protected under the WHA (Wild Horse Act). See 16 U.S.C. § 1333(a); see also 43 C.F.R. § 4710.5(a).

Livestock grazing on public lands is a privilege that can be taken away, if necessary, to protect the health of the range and even, if necessary, to protect wild horses and burros.

D. 43 C.F.R. 4710 Management Considerations

The EIS must take a hard look at BLM's authority to temporarily or **permanently** reduce or **eliminate** livestock grazing from the public lands in the HMAs pursuant to 43 C.F.R. 4710.5(a). This regulation allows the BLM to temporarily or permanently close a public land area to livestock grazing, "If necessary to provide habitat for wild horses or burros…" The BLM has the discretion to implement this either temporarily or permanently and this action is available whether or not there is an emergency.

E. 43 CFR 4700.0-6 Policy

The BLM statute 43 CFR 4700.0-6 clearly establishes the policies for the agency's management of wild horses and burros:

43 CFR 4700.0-6 states:

"(a) Wild horses and burros shall be managed as **self-sustaining** population**s** of healthy animals **in balance with other uses** and the productive capacity of their habitat.

(b) **Wild horses and burros shall be considered comparably with other resource values** in the formulation of land use plans.

The removal of horses and burros, while allowing higher numbers of livestock to graze the same areas, fails to adhere to 4700.06(b) which specifically states wild horses and burros "shall be considered **comparable** with other resource values in the formulation of land use plans." The definition of **comparable**[5] **is "similar or alike"** – clearly the AUMs allocated to wild horses and burros are not **comparable** with the AUMs allocated to livestock in the Complex.

The Wild Horses and Burros Management Handbook states that "resource values" are not a land use (e.g., livestock grazing) but rather wild horses and burros should be considered and valued in the same manner as "cultural, historic, scenic" resources. This would afford wild horses and burros even greater protections as cultural and historic resources are highly protected and reduction in livestock grazing and other management actions are routinely taken to prevent harm and to preserve cultural and historic resources.

X. ADAPTIVE MANAGEMENT

The EIS alternatives implement AMLs outlined in Resource Management Plans (RMPs). The EIS must acknowledge that AMLs are not set in stone as BLM's Adaptive Management (AM) mandate specifically instructed the agency *how* to treat RMPs:

> *"**The RMP will be implemented using adaptive management processes. Under adaptive management, decisions, plans and proposed activities are treated as working hypotheses rather than final solutions to management of resources and uses**. For the purposes of this plan, **adaptive management represents a** process that tests**, evaluates and adjusts the assumptions, objectives, actions**, and subsequent on-the ground results from the implementation of RMP decisions."*
> BLM Adaptive Management "Appendix N" (Attachment 21)

The above statement confirms that the EIS cannot hide behind the biased and unfair AMLs. The EIS must treat the AMLs as outlined in RMPs as "working hypotheses rather than a final solution to management of resources and uses." This means all the goals and objectives in the RMP must be re-examined as outlined in these comments.

> "*One consequence of this complexity is that **several pathways may exist to achieve similar outcomes, with alternative pathways differing enough in some relevant aspects (feasibility, cost, public acceptance) to be considered as bona fide alternatives***." (Attachment 22)

[5] https://www.vocabulary.com/dictionary/comparable: Use comparable to describe two things that are alike. https://www.merriam-webster.com/dictionary/comparable: similar, like

As such, the EIS must re-examine AMLs and *must* take a hard look at the lack of public acceptance for the RMPs and their corresponding AMLs. The EIS cannot merely state that the issues herein are "outside the scope" of the EIS and ignore them claiming all goals and objectives have been predetermined by the RMP. The RMP is not a "final solution" – and must be treated as a "working hypothesis."

> "***First, stakeholders must be identified and encouraged to participate*** [in the AM process]…. *Second, a* ***process must be implemented that solicits stakeholder input in the design of the adaptive management project*** *and, in particular,* ***the identification of management objectives and potential management actions****.* (Attachment 22)

As the quote above outlines, the DOI's *Adaptive Management Technical Guide* provides the steps the BLM should take to implement AM. These steps are reflective of the notion that the government works for the public – to "encourage participation" that uses stakeholder input in the development of objectives and potential management actions. Rather than merely going through the motion of NEPA-required public comment which then are literally ignored by the BLM employees who clearly are pushing forward with their pre-determined outcome for the proposed government action.

The National Environment Policy Act (NEPA) requires that the BLM consider the human environment. Therefore, the EIS must consider the "human environment" which is defined as:

> 40 CFR § 1508.14 Human environment. **The human environment shall be interpreted comprehensively to include** the natural and physical environment and **the relationship of people with that environment**. ...

Clearly, we at The Cloud Foundation have a relationship with wild horses and burros which are an "integral part of the natural system of the public lands." (Wild, Free-Roaming Horses and Burros Act)

Yet sadly, public comments supporting wild horses and burros submitted for many if not all the RMPs which established these biased AMLs fell on deaf ears.

XI. EIS MUST ACKNOWLEDGE AND BE CORRECTIVE OF AGENCY BIAS

The EIS fails to distinguish between when livestock versus wild horses/burros should be removed to protect sage grouse habitat. As previously discussed, the AML system is not based on science and is faulty based on its biased premise consistently allocated on average 80% of the AUMs in wild horse/burrow habitat to livestock. This BLM allocation cannot be attributed to anything but an anti-horse and anti-burro bias as documented in a 1984 Senate hearing (Attachment 23):

> *Attitudes and values that influence and direct public priorities regarding the size, distribution, and condition of horse herds, as well as their accessibility to public viewing and study, must be an important factor in the determination of what constitutes excess numbers of animals in any area. . . [A]n otherwise satisfactory population level may be controversial or unacceptable if the strategy for achieving it is not appropriately responsive to public attitudes and values. . . .*

> *Biologically, the area may be able to support 500 cattle and 500 horses, and may be carrying them. But if the weight of public opinion calls for 1,000 horses, the area can be said in this context to have an excess of 500 cattle. For these reasons, the term excess has both biological and social components. In the above example**, biological excess constitutes any number of animals, regardless of which class above 1,000. Social excess depends on management policies, legal issues, and prevailing public preference**..."*
>
> *"It continues to be obvious that the major motivation behind the wild horse and burro protection program and a primary criterion of management success is public opinion. Attitudes and values that influence and direct public priorities regarding the size, distribution, and condition of horse herds, as well as their accessibility to public viewing and study, must be an important factor in the determination of what constitutes excess numbers of animals in any area. **The choice of control strategies, when and if they become necessary, must also be responsive to public attitudes and preferences and cannot be based solely on biological or cost consideration**. The issue of excess numbers is conceptually severable from the strategies questions. However, an otherwise satisfactory population level may be controversial or unacceptable if the strategy for achieving it is not appropriately responsive to public attitudes and values."*
>
> "[BLM] *Personnel attitudes must also be accounted for in the decision-making process. We have, in the process of our inquiries, encountered a broad range of attitudes toward the wild horse and burro management program among BLM employees. We are not, however, confident that attitudes are evenly distributed throughout the Bureau. Indeed, we have met many employees who are sincerely committed to wild horse and burro management in the spirit of the 1971 Act. But **our experience also suggests that the Bureau must be sensitive to considerable pockets of resistance to the program within its own ranks and to the pressures which many district and area personnel feel to depict range, population, and other conditions in an antihorse and antiburro context**."*

The 1982 NAS (formerly known as the National Research Council) stated (Attachment 4):

> *All of this may seem to be a circuitous route to assigning a **meaning to the term excess**. But it constitutes the background for saying that the term has both a biological and social aspect to it. Biological excess, in our judgment, exists when the number of herbivores present degrades the ecosystem to the point where it is producing goods and services well below its potential, and particularly where the long-term productivity and capacity for ecological recovery are impaired. Excessive water runoff and soil erosion might be indicators of this state of affairs.*
>
> *Such excess can occur with only a single species of grazing animal or with some combination of two or more. For an oversimplified example, **if a given area can properly carry 1,000 grazing animals but has 1,500, then 500 are in excess. It makes no difference whether the 1,500 are horses, cattle, or a combination of both. An excess still exists, hypothetically assuming equal substitution. In effect, there is a carrying capacity for 1,000 mouths, and the 500 additional constitute the excess.***
>
> ***Which of these species of animals should be carried in a given area becomes one of human values or preference. Biologically, the area may be able to support***

> ***500 cattle and 500 horses, and may be carrying them. But if the weight of public opinion calls for 1,000 horses, the area can be said in this context to have an excess of 500 cattle.***
>
> ***For these reasons, the term excess has both biological and social components. In the above example, biological excess constitutes any number of animals, regardless of which class, above 1,000. Social excess depends on management policies, legal issues, and prevailing public preference.***

These same issues remain relevant today. The government has failed to address the very biases identified by Congress and outside, independent organizations. This EIS cannot continue this biased approach to public lands management and the anti-horse and anti-burro bias must end. Utilizing select science to continue to justify allowing private, commercial livestock to graze on our public lands while removing or reducing wild horse/burro numbers (despite the large disparity in actual use on all public lands) only continues the government's biased management which is not based on science but rather politics.

XII. CONCLUSION

We strongly support protecting sage grouse habitat. However, the EIS continues the biased, unscientific scapegoating of wild horses and burros instead of focusing attention on private, commercial livestock which is documented as having far more widespread negative environmental impacts – not just for sage grouse, but other wildlife and climate change. The EIS fails to address the issues of concern raised throughout these comments. The EIS must be amended to adequately disclose and analyze pertinent information needed before a proposed action can be identified to achieve the stated objective.

Thank you for your consideration,

Kerry Ferguson

Kerry Ferguson
Executive Director
The Cloud Foundation

Attachments:

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4. NRC 1982
5. Uresk D.W., "Cow Calf Forage Consumption," Rangelands (2010)
6. Walker, R.S., "Impact of Cow Size on Efficiency," Louisiana Agriculture (2015)
7. PEER 2021 letter
8. PEER "Number and Area of BLM Allotments Within HMAs…"
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10. Costs and Consequences: The Real Price of Livestock Grazing on America's Public Lands
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14. Gonacon articles
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17. Hall (2017)
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20. “Wild horses and donkeys dig wells in the desert, providing water for wildlife,” Main, D. National Geographic, April 2021
21. BLM document, Appendix N: Adaptive Management
22. Adaptive Management, the U.S. Dept of Interior Technical Guide
23. Senate Hearing, DOI Appropriations, FY1984

June 13, 2024

BLM Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500, Salt Lake City, UT 84101

Please acknowledge receipt of our comments.

To whom it may concern,,

Thank you for this opportunity to comment on the Greater Sage Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement. Please accept these comments from me on behalf of the Alliance for the Wild Rockies, Wildlands Defense, Yellowstone to Uintas Connection, Council on Wildlife and Fish, and Native Ecosystems Council (Alliance).

As discussed below, the Greater Sage Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement (EIS) as proposed violates the National Environmental Policy Act (NEPA), the Federal Lands Policy And management Act (FLPMA), the Endangered Species Act (ESA), and the Administrative Procedure Act (APA). Below are questions that must be clearly answered by the BLM in the Final EIS in order to fully inform the public and decision-maker of the consequences of implementation of the Project, as required by NEPA. We elaborate on the reasons that these questions are important by providing a narrative of some of our concerns and describing numerous ways in which the Project as proposed would violate federal environmental laws.

Alliance has reviewed the statutory and regulatory requirements governing BLM projects, as well as the relevant case law, and compiled a check-list of issues that must be included in the EIS for the Project in order for the BLM's analysis to comply with the law. Following is a the list of necessary elements for the EIS.

I. NECESSARY ELEMENTS FOR PROJECT EIS:

A. Disclose the acreages of past, current, and reasonably foreseeable management activities in greater sage grouse habitat, e.g., logging, grazing, burning, oil and gas devilment, and road-building activities;

B. Disclose the biological evaluation for the greater sage grouse;

C. Disclose the BLM's record of compliance with its monitoring requirements as set forth in its Resource Management Plans;

D. Disclose the BLM's record of compliance with the additional monitoring requirements set forth in previous the current greater sage grouse management plan'

E. Disclose the results of the field surveys for greater sage grouse;

F. Disclose the level of current noxious weed infestations in the greater sage grouse habitat and the cause of those infestations;

G. Disclose the amount of detrimental soil disturbance that currently exists in each greater sage grouse habitat from previous management activities such as oil and gas drilling, cutting, burning and grazing activities;

H. Disclose the expected amount of detrimental soil disturbance in each unit after ground disturbance and prior to any proposed mitigation/remediation;

I. Disclose the analytical data that supports proposed soil mitigation/ remediation measures;

J. Disclose the historic levels of different types sage brush in the and sage grouse thought greater sage grouse habitat;

K. Disclose the type of sage grouse habitat necessary to sustain viable populations of greater sage grouse;

L. Disclose the amount of current habitat for juniper- sagebrush dependent species in the Project area;

M. Disclose and address the concerns expressed by the ID Team in the draft Five-Year Review of the Resource Management Plan regarding the failure to monitor population trends of greater sage grouse h, the inadequacy of the Resource Management Plan old growth juniper standard, and the failure to compile data to establish a reliable inventory of sensitive species in the Dillon Field Office;

N. Disclose the impact of water developments on greater sage grouse;

O. Please disclose how this project will enhance greater sage grouse habitat;

P. Please disclose how this proposal will degrade greater sage grouse habitat:

Q. Disclose maps of the area that show the following elements:

1. Past, current, and reasonably foreseeable burning units in greater sage grouse habitat;

2. Past, current, and reasonably foreseeable grazing allotments in greater sage grouse habitat;

3. Past, current, and reasonably foreseeable oil and gas drilling/production in greater sage grouse habitat;

4. Past, current, and reasonably foreseeable mining in greater sage grouse habitat;

5. Past, current, and reasonably foreseeable motorized/ off road vehicles used in greater sage grouse habitat;

R. Disclose the effect of foreseeable management activities in greater sage grouse habitat, e.g., logging, grazing, burning, oil and gas development, motorized/ off road vehicle use, outdoor recreation and road-building activities on greater sage grouse and its habitat.

S. How will the different alternatives effect climate change?

Page ES-6 of the EIS states: ***Alternatives 1 and 2 habitat management areas do not reflect the most current research identifying habitat value for long-term persistence of GRSG, including potential habitat impacts resulting from climate change.***

Please update the EIS to include the best available science.

Page ES-6 of the EIS also states: ***As described for GRSG, the removal of livestock grazing under Alternative 3 could result in an increased risk of wildland fire that could destroy or damage natural, biological, or cultural resources.***

Please see the column below by George Wuerthner:

Does Cattle Grazing Preclude Large Blazes?

George Wuerthner
December 14, 2020

https://www.thewildlifenews.com/2020/12/14/does-cattle-grazing-preclude-large-blazes/

If cattle graze to bare soil, it is true that fires are slowed under such conditions, but the ecological impacts are enormous. Photo George Wuerthner

When I worked for the BLM, us "ologists" (hydrologist, ecologists, biologists, archaeologists, geologists, and botanists) used to refer to

Range Conservationists as Range "Cons" because they conned the public into believing many myths about livestock grazing.

It's essential to keep in mind that range cons have a financial conflict of interest. If there are no cows, there is no reason to have a range conservationist on the payroll. So, what you will see over and over is that range cons will do just about anything to maintain cows on the range. And they don't mind spending your money (taxpayer) to make this happen. Most range cons (and range professors) see their allegiance to the livestock industry, not the public interest.

One of the "cons" heard continuously from range conservationists and repeated by uninformed media is that grazing can help preclude large "mega" fires by "reducing" fuels. This is one of those many assertions that have a grain of truth but is nevertheless misleading.

EXPERIMENTAL VS LANDSCAPE SCALE OF RESULTS

Whenever you read such pronouncements, be skeptical. Almost all the "evidence" for the value of grazing to reduce wildfires comes from government apologists with connections to the livestock industry.

Many of the studies purporting to demonstrate the influence of livestock grazing on fire spread were done on small experimental plots of land. The transfer of these findings to the larger landscape scale is questionable.

For instance, in an experimental study of cattle grazing impacts on fire, 90% of cheatgrass in plots was consumed during the "boot" stage. These grazed plots were then burned and found to slow or

stop fire spread (Bailey, Derek W., et al. 2019). The problem with this and many other experiments is that given a choice, livestock will not consume cheatgrass except early in the spring while green. So, getting cattle to remove 80-90% of the grass except in experimental plots is unlikely.

Another problem is keeping cattle on the desired target area–typically this is done by transporting cattle by truck to the target site, then herding or using moveable fences to keep cattle grazing focused. All of this adds immensely to the cost of any livestock grazing operation. Most ranchers are simply not interested in spending that kind of money to get a bit of cheap forage.

Furthermore, the process of getting the cattle to remove such a high percentage of cheatgrass would decimate soil biocrusts, which slow or prevent cheatgrass establishment. Since cattle prefer to forage on native perennial grasses, if a site had any native species left, they would disproportionately be grazed, harming their competitive ability to survive cheatgrass invasion (Reisner, Michael D., et al., 2013).

In another widely cited study in Arizona, the researchers had several small plots (several acres in size). They compared the fuel remaining after fields were grazed with non-grazed plots. They concluded (with modeling) that light utilization (26%) in treated sites, the BehavePlus fire model predicted that herding reduced fire rate of spread by more than 60% in grass communities and by more than 50% in grass/shrub communities (R.A. Bruegger et al. 2016).

There are several misleading implications of this study. As in the previous study, the experiment was done on small plots where grazing was monitored and tightly controlled. This kind of monitoring

and control does not exist on most public lands or even private land parcels.

But the real problem with this and many other studies that presume to show a livestock-grazing induced reduction in fire spread is that they do not work under extreme fire weather.

Bruegger and colleagues admit as much in their next to the last paragraph: "Although it is a promising tool for altering fire behavior, targeted grazing will be most effective in grass communities under moderate weather conditions."

The weather factors are significant because nearly all massive wildfires burn under "extreme fire weather conditions." Under such conditions, targeted grazing, prescribed burning, thinning of forests, and fuel breaks, fail to contain or stop fires. In attempting to reduce fuels, such prescriptions often lead to more fire-prone species like cheatgrass.

Extreme fire weather conditions—drought, high temperatures, low humidity, and most importantly, high winds- overwhelm all fuel reductions. The problem for Americans is that climate change is driving large blazes, not fuels.

Windblown fire races through grazed grasslands near Helena, Montana. Photo George Wuerthner

In an overview of various fuel reductions, the researchers (Reinhard et al. 2008) concluded that: "Extreme environmental conditions …overwhelmed most fuel treatment effects. . . This included almost all treatment methods including prescribed burning and thinning. . .. Suppression efforts had little benefit from fuel modifications."

Although they primarily examined forest management options, the same necessary conclusions apply to reducing fuels on rangelands (Williamson, Matt. A. et al., 2019)

Other evidence is simply anecdotal. Cattle graze a strip of cheatgrass. A fire arrives, and the fire slows or is easily suppressed by firefighters. An example is here found with the title Firefighting Catt: Targeted grazing creates firebreaks in cheatgrass. https://www.hpj.com/livestock/firefighting-cattle-targeted-grazing-creates-firebreaks-in-cheatgrass/article_b852db54-3c0a-11eb-ab3a-c7793f18ff01.html

Without knowing the circumstances of the fire's burn and weather conditions at the time, one can't assume that grazing had anything to do with the fire's behavior. Did the wind shift directions or simply stop. Was the fire even burning under "extreme conditions" which are the only times you have large fires-the very fires that cattle grazing advocates are suggesting grazing is effective in halting or slowing?

Typically, under extreme weather conditions which always includes high winds, any wind-blown fire spews embers up to a mile or more beyond the burning front. Such a blaze will easily skip over a strip of grazed land, making such fuel breaks or targeted grazing ineffective.

SEVERE GRAZING AND COLLATERAL DAMAGE

Severe grazing can reduce fuels that would allow fires to spread. Still, grazing to this level creates a lot of collateral damage, including soil compaction, which reduces water infiltration (Warren, S.D. et al., 1986, Belsky et al. 1999), social displacement of native herbivores like elk and deer (Clegg 2014, Frisina 1992), water pollution (Carter, 2002), destruction of riparian areas (the green line of vegetation influenced by water) (Kauffman et al 2001, Kauffman 2004), consumption of plants needed by other wildlife like forbs consumed by sage grouse (Doherty et al. 2014), and reduction of hiding cover for wildlife, and many other impacts (Fleischner 1994, Freilich et al., 2003).

Collateral damage from livestock grazing includes cattle damage to riparian zones (the green vegetation area near water). Photo George Wuerthner

It is important to note that much of the grassland/shrub ecosystems of the western United States west of the Great Plains evolved in the absence of large herds of grazing herbivores like bison (Mack and Thompson 1982), thus are vulnerable to heavy grazing pressure.

Alternatively, and far more critical these days, livestock grazing is one factor in the spread of cheatgrass, an annual exotic that is extremely flammable (Belsky, A.J. and J. L. Gelbard, 2000). Merriam et al. (2006) found that nonnative plant abundance was considerably higher on fuel breaks than in adjacent wildland areas, especially when the heavy ground disturbance was involved, providing a potential vector for weed invasion

Therefore, cheatgrass has increased fire frequency in sagebrush ecosystems, causing complete type conversion of sagebrush steppe in many areas (Reisner Michael D. et al. 2013).

Cheatgrass surrounds a relict perennial native grass. Photo George Wuerthner

The factors that favor cheatgrass spread, including livestock grazing. Selective grazing of preferred perennial grasses reduces their competitive abilities, permitting cheatgrass colonization (Maestas et al. 2019)

Besides, biological soil crusts (BSC) found in the interspaces between bunchgrasses inhibits cheatgrass establishment. Cattle trample these BSC (Root, Miller, and Rosentreter. 2019).

Biological crust covers the surface of soil. Cattle trampling crusts creates habitat for cheatgrass establishment. Photo George Wuerthner

Maintaining healthy stands of perennial grasses has been shown to inhibit cheatgrass spread (Strand et al., 2017).

Another study that looked at fuel breaks created by targeted grazing and other measures like bulldozing native vegetation cautioned that the "cure might be worse than the disease" since the destruction of soil biological crusts and loss of native grasses that occur with targeted grazing, bulldozing. Other fuel reductions create a disturbance habitat that favors the spread of cheatgrass.

Fuel break on BLM land creates the ideal habitat for cheatgrass establishment. Photo George Wuerthner

The authors cautioned: "these projects could also add thousands of kilometers of new fuel breaks to the region over the next decade or two, directly altering hundreds of thousands of hectares through habitat conversion, and indirectly affecting sagebrush plant and animal communities through the creation of new edge effects and habitat fragmentation" (Shinneman et al. 2018).

Furthermore, the probability that any area "treated" by targeted grazing and other fuel reductions will encounter a blaze when fuel removal is effective is extremely small (Rhodes and Baker 2008). Thus, targeted grazing and further fuel reductions, which have their own set of impacts, occur now, potentially reducing a fire that may or may not come in the future.

SUMMARY

Using livestock grazing to preclude large wildfires is an ineffective means of coping with blazes. Livestock grazing has little influence on large-scale blazes, primarily driven by extreme climate/weather events. The probability that a large fire will encounter a recently grazed area is small, but livestock grazing's ecological impacts are enormous and assured. The best way to reduce wildfire's threat is to fire-safe the home and ultimately reduce global climate warming, driving many of the more enormous blazes experienced in the West.

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Please analyze the effect of grazing in the leks on greater sage grouse and their habitat because of the water development.

To provide cover for nests and chicks, livestock grazing should be managed in breeding habitat to promote residual cover for concealing sage-grouse nests and chicks from predators.

Please leave 7" of residual grass vegetation for spring nesting. No spring grazing should be allowed in greater sage grouse habitat. No new or existing water developments should be allowed in greater sage grouse habitat.

Please do not allow any burning sagebrush or juniper in greater sage grouse habitat for any reason. during nesting season

Please find attached, “Livestock Grazing and Sage-Grouse Habitat: Impacts and Opportunities,” by Boyd et al. 2014.

Consequently, research on grazing parameters that promote nest and chick survival for sage-grouse populations (including timing, class of livestock, and duration and intensity of use) is needed. Ranch and rangeland managers can reduce the indirect influences of grazing practices by following recommendations to reduce fence collisions, limiting livestock watering facilities and turning them off when not in use, by installing bird ramps in stock tanks, and by avoiding

treatments that reduce long-term sagebrush abundance. Understanding how livestock grazing impacts the structure and composition of sagebrush plant communities provides a critical foundation for assessing the ramifications of grazing to sage-grouse habitat. Establishing a common understanding can reduce conflict over grazing management and focus management efforts in the most impactful direction.

Please find attached, an article by George Wuerthner titled, "The Role of Livestock in Sage Grouse Decline," which states: "Stock tanks are good breeding habitat for mosquitoes. Mosquitoes carry West Nile Virus which kills sage grouse. In some populations, as much as 29% of the birds have died from the infection."

Wuethner's article also states: "By far the worst thing that cattle do is trample the biocrust. And it's important to note that the entire Great Basin did not have large herds of grazing animals like bison in historic times. The plant communities are therefore not adapted to trampling and heavy hooves tearing up the soil."

How will this Management Plan Amendment effect biocrust and what is the cumulative impact of the project's effect on biocrust

Increasing grass cover was related to improved nest success in northwest Nevada. Connelly et al. 2000 reported that sage-grouse nesting under sagebrush experienced greater nest success (53%) un-

der sagebrush than those nesting under non sagebrush (22%). In contrast to many studies, vegetation characteristics had no relationship to nesting success in southern Idaho. Nor were there differences in success for nests beneath big sagebrush compared to other shrub species in WA. Moreover, nesting success for non sagebrush nests (42%) was higher than for sagebrush nests (31%) in California, thus differences in herbaceous cover may be as important or more important than shrub species in affecting nest success and may explain the different findings of various investigators .

Sage grouse nesting is expected to occur on average from 0.68 to 3.8 miles from a lek, while nesting may also extend up to 12 miles from a lek (Connelly et al. 2000. What does the current science say about early spring grazing in sage grouse nesting habitat?

Shrubs provide thermal and security cover; sagebrush is the most likely shrub where you find sage hens, so it's most used. What are the keys to successful nesting habitat, such as precipitation regime (moister = more forbs relative to grasses), distance to a water source, closeness to roads, and predator density. If herbaceous cover is crucial, please consider the effect of grazing by cattle on sage grouse.

Please list 10 or 15 bullet point defining greater sage grouse habitats for winter, spring, leks, nesting, raising young broods, and dry Augusts and Septembers.

What is being proposed to restore sage grouse and sagebrush habitat?

Page 2-103 of the EIS states:

On BLM grazing allotments, grazing activities are managed through several mechanisms (permit terms and conditions, allotment management plans, annual pre-turnout authorization meetings, and ongoing monitoring) to ensure that grazing meets or move towards meeting Land Health Standards. Management for meeting land health standards avoids long-term and wide-spread improper grazing will be avoided. Table 3- 7 shows that of the allotments with at least 15% PHMA, 5,140 allotments (53% of all allotments) are in Category A, meeting all standards or making significant progress toward meeting the standard, while 1,887 allotments (19% of all allotments) are in Categories B through F, representing different categories of not meeting land health standards. The remainder of the allotments do not have information on evaluations.

Please see the attached report by PEER that found: ***Of the total acres assessed, 50% (57 million acres) fail to meet LHS, an area approximately the size of the state of Illinois.***

- ***Of the 50% of the lands that failed to meet LHS, the agency said that livestock overgrazing is a significant reason for failure in 33% of cases or approximately 38 million acres.***

Page 4-187 of the EIS states:
Further, as described in Section 2.9.7, livestock grazing is managed to meet or make progress toward land health standards, thus reducing the likelihood of adverse effects.

We could not find section 2.9.7. Where is it?

But PEER report states that have of the 50% of the BLM grazing allotments failed to meet the land health standards. Given this, what is the effect of continued grazing in greater sage grouse habitat on climate change?

THE BLM DID NOT TAKE A HARD LOOK AT HOW CLIMATE CHANGE AFFECTS AND IS AFFECTED BY the THIS PROJECT IN VIOLATION OF NEPA, NFMA, THE FOREST PAN AND THE APA.

Published scientific reports indicate that climate change will be exacerbated by grazing, and that climate change will lead to increased wildfire severity (including drier and warmer conditions that may render obsolete the proposed effects of the Management Plan Amendment). The former indicates that the Great Sage Grouse Management Plan Amendment may have a significant adverse effect on the environment, and the latter undermines the central underlying purpose of the Project. Therefore, the BLM must candidly disclose, consider, and fully discuss the published scientific papers discussing climate change in these two contexts.

The BLM refused to study in detail any alternative consider the cumulative impacts of their proposed actions on climate change in violation of NEPA, FLPMA, the RMP and the APA. Eventually, if the BLM does not begin considering the long-term cumulative impacts of its management activities on climate change, the courts will likely force the BLM to consider those impacts. This important consideration could lead land managers and policy makers to the conclusion that BLM lands are more valuable to the national and global community as carbon sinks than as grazing allotments.

Addressing climate change is a requirement o of the National Environmental Policy Act (NEPA), unless the agency can document that livestock grazing and associated effects do not affect climate change. 2023 was the world's warmest year on record; 2023's heat produced many costly climate driven weather events here in the United States and worldwide; the U.S. alone had a record breaking 28 separate billion-dollar weather and climate disasters this past year, causing over $90 billion in damages; the average global temperature for 2023 topped the pre-industri8al (1850 to 1990) average by 1.35 degrees Celsius; the world has been continuing to heat up, and we're now clearly in the danger zone for triggering damaging tipping points; a tipping point is when a tiny change can set off events that are large, abrupt and hard to reverse; there are tipping points that pose threats of a magnitude that has never been faced before by humanity; we're talking about impacts like the global-scale loss of capacity to grow major staple crops; current emissions of carbon dioxide are high than ever; it's about 1.1 percent higher than last year.

In Montana, by 2069, some areas can expect up to five more weeks of above-90 degree days each year; over the past 65 years, the state's temperatures have increase 0.42 degrees per decade; that's an increase of 2.7 degrees in the past 65 years, which is above the national average; the greater rates of change occur at higher elevations; by mid-century, computer models predict a 4-degree temperature increase in central and western Montana; also by mid-century, western Montana will see 10 to 15 additional days of 90-degree plus temperatures (Montana Outdoors March-April 2023).

The Greater Sage Grouse Management Plan Amendment draft EUS did not addressed why the BLM has no public responsibility to ad-

dress climate change as affected by BLM management activities. If the agency is not going to provide any analyses as to why grazing management is not required as per the NEPA to address effects on climate change, the justification for this failure needs to be provided to the public.

Weeds

Native plants are the foundation upon which the ecosystems of the Forest are built, providing forage and shelter for all native wildlife, bird and insect species, supporting the natural processes of the landscape, and providing the context within which the public find recreational and spiritual opportunities. All these uses or values of land are hindered or lost by conversion of plants. The ecological threats posed by noxious weed infestations are so great that a former chief of the Forest Service called the invasion of noxious weeds "devastating" and a "biological disaster." Despite implementation of BLM "best management practices" (BMPs), noxious weed infestation on the Forest is getting worse and noxious weeds will likely overtake native plant populations if introduced into areas that are not yet infested. The BLM has recognized that the effects of noxious weed invasions may be irreversible. Even if weeds are eliminated with herbicide treatment, they may be replaced by other weeds, not by native plant species.

Invasive plant species, also called noxious weeds, are one of the greatest modern threats to biodiversity on earth. Noxious weeds cause harm because they displace native plants, resulting in a loss of diversity and a change in the structure of a plant community. By removing native vegetative cover, invasive plants like knapweed may increase sediment yield and surface runoff in an ecosystem. As well knapweed may alter organic matter distribution and nutrient through a greater ability to uptake phosphorus over some native species in grasslands. Weed colonization can alter fire behavior by increasing flammability: for example, cheatgrass, a widespread noxious weed in the Dillon Field office area, cures early and leads to

Weed colonization can also deplete soil nutrients and change the physical structure of soils. The BLM's own management activities are largely responsible for noxious weed infestations; in particular, grazing, water developments, and road construction and use create a risk of weed infestations.

Please address the ecological, social and ascetic impact of current noxious weed infestations within the project area. Include an analysis of the impact of the actions proposed by this project on the long and short term spread of current and new noxious weed infestations. What treatment methods will be used to address growing noxious weed problems?

What noxious weeds are currently and historically found within the project area? Please include a map of current noxious weed infesta-

tions which includes knapweed, Saint Johnswort, cheat grass, bull thistle, Canada thistle, hawkweed, hound's-tongue, oxeye daisy and all other Category 1, Category 2 and Category 3 weeds classified as noxious in the Utah COUNTY NOXIOUS WEED LIST. 1975).

Are yellow and orange hawkweeds present within the project area?

Please address the cumulative, direct and indirect effects of the proposed amendment on weed introduction, spread and persistence that includes how weed infestations have been and will be influenced by the following management actions: burning and cutting of trees and shrubs

Noxious weeds are not eradicated with single herbicide treatments. A onetime application may kill an individual plant but dormant seeds in the ground can still sprout after herbicide treatment. Thus, herbicides must be used on consistent, repetitive schedules to be effective.

What is the effect of herbicide treatments on greater sage grouse?

What commitment to a long-term, consistent strategy of application is being proposed for each weed infested area within the proposed action area? What long term monitoring of weed populations is proposed?

When areas treated with herbicides are reseeded on BLM land, they are usually reseeded with exotic grasses, not native plant species. What native plant restoration activities will be implemented in areas

disturbed by the actions proposed in this project? Will disturbed areas including burn units be planted or reseeded with native plant species?

The scientific and managerial consensus is that prevention is the most effective way to manage noxious weeds. The Forest Service concedes that preventing the introduction of weeds into uninfested areas is "the most critical component of a weed management program." The Forest Service's national management strategy for noxious weeds also recommends "develop[ing] and implement[ing] forest plan standards . . .." and recognizes that the cheapest and most effective solution is prevention. Please show on a map where is greater sage grouse habitat currently have no noxious weed populations within their boundaries.

What minimum standards are in the Resource Management Plan to address noxious weed infestations? Please include an alternative in the that includes land management standards that will prevent new weed infestations by addressing the causes of weed infestation. The failure to include preventive standards violates NFMA because the BLM is not ensuring the protection of soils and native plant communities.

Additionally, the omission of an EIS alternative that includes preventive measures would violate NEPA because the BLM would fail to consider a reasonable alternative.

Rare Plants

The ESA requires that the BLM conserve endangered and threatened species of plants as well as animals. The response of each of the sensitive plant species to management activity varies by species, and in some cases, is not fully known. Local native vegetation has evolved with and is adapted to the climate, soils, and natural processes such as fire, insect and disease infestations, and windthrow. Any management or lack of management that causes these natural processes to be altered may have impacts on native vegetation, including threatened and sensitive plants. Herbicide application – intended to eradicate invasive plants – also results in a loss of native plant diversity because herbicides kill native plants as well as invasive plants. Although native species have evolved and adapted to natural disturbance such as fire on the landscape, fires primarily occur in mid to late summer season, when annual plants have flowered and set seed. Following fall fires, perennial root-stocks remain underground and plants emerge in the spring. Spring and early summer burns could negatively impact emerging vegetation and destroy annual plant seed.

What threatened, endangered, proposed, rare and sensitive plant species and habitat are located within the greater sage grouse habitat? What standards will be used to protect threatened, rare, sensitive and culturally important plant species and their habitats from the

management actions proposed in this project?

Describe the potential direct and indirect effect of the proposed management actions on rare plants and their habitat.

Please explain to the public what wildlife species will be benefited by this project and what species will be harmed. We believe that the NEPA requires the agency to adequately demonstrate that the determination that this project will benefit all wildlife species needs to be included in the public involvement process, which in this case is scoping.

Drilling new wells for livestock tanks significantly alters the hydrology and is antithetical to improving the health of the land. For one thing, such wells often cause natural springs, upon which native wildlife rely, to go dry as the water table is lowered. When that happens, the tiny streams they feed also disappear and any vegetation — such as cottonwoods and wetlands that line and cool the canyon bottoms – will likewise die. Please analyze the cumulative effects of the water developments on natural springs and the fish and wildlife that are dependent upon them including greater sage grouse.

Disrupting the natural springs steals the water that would otherwise provide for fish, wildlife and other downstream vegetation. In the end, there will be less or no water in the project area for frogs, deer, and anything else that requires water to survive — which is just about everything.

The attached paper titled, Upland Water and Deferred Rotation Effects on Cattle Use in Riparian and Upland Areas" by Carter et al. found drilling wells for livestock tanks failed to relieve pressure on riparian areas, which makes sense since the riparian areas are cool, shady, and vegetated, which is why the cattle go there.

Although decades of range science research show the best way to improve the health of riparian areas is by reducing or eliminating cattle. Please analyze an alternative that removed or lessened the number of cattle from the project area.

Without an understanding that groundwater is a complex issue, it is easy to just suppose that the existence of groundwater is a deep pool of flooded, rock strata. Nothing could be further from the truth in the area in question.

Indeed, groundwater does exist in ancient, deep, saturated strata. However, there is another important water element that is poorly studied and understood, and that is the discrete flow of water through various fractures and tectonic fissures that frequently issues onto the surface as springs, artesian wells, and other surface water in general. These discrete subsurface flows can range for miles and come from very unlikely areas. Our concern is that unless these are defined in the area in question, it cannot be well understood what the short and long term effects will be on water quantity and quality at various surface water sources. Not only can wells that are drilled in the wrong area have significant impact on distant water source quantities, but the concentration of animal wastes at these areas can have

devastating impacts on water quality at “downstream” springs and surface water, sometimes miles away.

BRIEF DESCRIPTION OF GROUNDWATER DYNAMICS

The emergence of water at a spring is not a spot where diffuse groundwater suddenly appears onto the land surface. By “diffuse”, I am referring to water, some very ancient, that fell as rainwater and settled into a quiet existence in deep, rock strata. Spring water is primarily the result of discrete, or channel flow that has at times come from miles distant, flowing through fracture channels and fissures until in intersects the surface. Typically, these spring flows contain elements of both diffuse groundwater and distant discrete water.

This is something that can be easily determined by monitoring the flow over time. Most discrete flow emerges right after rain water enters up the gradient, and will last for a few days. It will subside and the remaining flow is typically diffuse groundwater that seeps into the discrete channels slowly and provides the long term flow of a spring. Diffuse flow is typically clean water that has been in the ground for a very long time while discrete water may be heavily polluted due to activity on the surface where the water enters the discrete, subsurface, recharge area. A spring recharge area can be delineated through groundwater tracing work and the actual area on the surface that impacts the spring can be clearly defined.

Obviously this is a very dynamic situation and varies with each spring, or surface source of water. If it is not defined, then there is no way to say that drilling a well in a certain location will not impact surface water flow somewhere down the gradient. Not only can it impact the water flow of a distant spring, but an increase in animal excrement, if it occurs in the wrong area, can cause water that is carried into the subsurface to be very polluted and therefore emerge unchanged at a distant spring.

So to summarize here, there are two very different and significant issues that must be explored before a decision can be made on drilling the wells. One is will the well intersect a discrete flow that pulls water from a distant spring, sometimes miles away. And secondly, will the increased animal excrement in the area fall in a discrete recharge area that will emerge at a distant spring as very polluted water. Without an answer to these issues, it is not wise to drill new wells indiscriminately. The effects could be devastating and have a very lasting effect.

Until you witness the incredible effects a herd of cows have on an area, it may not be easy to fully appreciate what is at risk here. Pristine areas that were clean and wild, utilized by wildlife, and pleasant to explore, have become cess pools with dead cows, trampled vegetation, and lack of natural wildlife. Elk and deer would no longer use the areas. While we appreciate the problems that herdsmen may have with cows in such remote areas, they do not own the land. It is there for everyone to explore and appreciate. While I know there is

nothing we can do to stop the cows altogether, it is our responsibility to make sure that further destruction does not occur.

It is imperative that the recharge areas of springs and surface water be defined in the general (several miles) area of the proposed wells. I have extensive experience in these endeavors as you can read in my Curriculum Vitae. I am retired now, but would be willing to offer my assistance in anyway possible to delineate the groundwater situation in the proposed well drilling areas. Regardless, it is the responsibility of BLM to make sure that we don't have to live with the results of poor judgment on the issues involved.

<u>REFERENCES</u>:

v Groundwater Tracing Handbook, Thomas Aley, 2019

v Baseline Groundwater Hydrology and Water Quality in and Around Bluff, Utah, USGS, 2019.

v Use of Dye Tracing to Determine Ground-Water Movement to Mammoth Crystal Spring, Sylvan Pass Area, Yellowstone National Park, Wyoming, 2006

v Ground Water Tracers, National Ground Water Association, 1985

1. Will the BLM be considering binding legal standards for noxious weeds in its Land Management Plan?

2. How effective has the BLM been at stopping (i.e. preventing) new weed infestations from starting during juniper and sage-brush cutting and burning and mechanical operations?

3. Is it true that new cattle and mechanical treatments are the main cause of new noxious weed infestations?

4. Is it true that noxious weeds are one of the top threats to biodiversity on public lands?

5. How can the BLM be complying with FLPMA's requirement to maintain biodiversity if it has no legal standards that address noxious weeds?

6. The EIS shows only a cursory examination of uplands not a comprehensive examination by interdisciplinary field crews as required by NEPA, FLMPA, the RPA and the APA. A comprehensive baseline examination is needed to describe uplands.

7. Please provide all data and maps that describe where, when and how field examinations related to landscape health assessments occurred. Please include tabulated results of write-ups that summarize the conditions and include the members and list the qualifications of the interdisciplinary team and which completed the assessment.

8. Which data sets were used to characterize the landscape and prioritize land health assessments?

9. What process was used to prioritize the landscape and determine if an area should be assessed or not?

10. Were "walk-through" examinations completed across the landscape of the project to identify the cumulative impacts and characterize sites and current condition as well as disturbance - provide supporting records that prove management activities effect of greater sage grouse and their habitat? If walk-throughs were not done please explain as why?

11. Were walk through examinations completed the landscape of uplands to identify and characterize sites and current conditions and disturbances and if not please explain why?

12. Please provide descriptions of reference areas or reference sites that were used to make comparisons to existing upland sites that were examined in the field.

13. Please include all copies of photos taken for land health assessments, proper function and condition of riparian areas and all other riparian assessements, e.g. green line surveys.

14. Please provide copies of riparian monitoring data, associated photos and upland trend data.

15. Would the habitat be better for whitebark pine, Monarch butterflies, grizzly bears, sage grouse, wolverines, pine martins, northern goshawks, native fish, western bumble bee, and lynx if there were no cattle gazing in the Project area?

16. Please formally consult with the U.S. Fish and Wildlife Service on the impact of the greater sage grouse draft resource management plan amendment on great sage grouse and their habitat.

17. Please formally consult with the U.S. Fish and Wildlife Service on the impact of the project with the on all Federal Candidate, and listed Species-Plants in the project area.

18. Disclose the biological assessment for the candidate, threatened, or endangered species with potential and/or actual habitat in the greater sage grouse habitat;

19. NEPA requires the BLM to consider biological corridors. The standard for such a review is the same "hard look" NEPA requires of other environmental effects. We are requesting the BLM analyze the current status of wildlife corridors for all sensitive and TES species, and effects of each of the alternatives on the linkages. That means that corridors within the analysis area and linkages with areas adjacent to the analysis area need be examined, plus the value of the entire analysis area as part of a larger corridor within or between ecosystems.

20. What is the significance of the impacts from past livestock grazing and other management actions on the diversity of plant species in the analysis area?

21. Livestock grazing has detrimentally impacted many riparian areas. How does this effect sage grouse?

22. What is the condition of all watersheds and other riparian areas in the analysis area, especially in regards to past management activities including livestock grazing? Please analyze the significance of the adverse impacts grazing has had upon fish and other aquatic organisms. The EIS should disclose the results of up-to-date monitoring and surveys of fish habitat and watershed conditions.

23. Riparian studies should be undertaken and disclosed for all streams and wetlands in greater sage grouse habitat. Please disclose in the EA each stream encroachment of forest habitat into the riparian zones, overall percentage of stream bank damage/ shear, degree of water table lowering due to livestock grazing, and estimate of stream widening and water level lowering. Are there streams that are now dry or ephemeral due to livestock grazing that were once perennial? Compared to natural levels, what are the sediment loads, levels of fecal coliform bacteria, stream bank stability and stream flow rates of the streams in the area? Please disclose the locations of seeps, springs, bogs and other sensitive wet areas, and the effects on these areas of livestock grazing.

24. We request an economic analysis that compares the expense of restoring these damaged areas, on a continuing basis, with a no-grazing scenario.

25. Compaction by cattle likely slows seedling growth rates, creates stress for any plant that is stepped on, and may impact roots of

larger trees as well. Compacted soils on slopes don't retain moisture as well, and this can cause more runoff than uncompacted slopes, and impact riparian areas that typically absorb the water. Please analyze the effects of cattle on native plant diversity and soils.

26. We are concerned that detrimental soil thresholds may already have been exceeded in the allotment areas. The EIS should include disclosures of the amount of detrimental soil conditions due to past activities.

27. How you will meet soil conservation standards under the RMPs?

28. Cattle tend to graze in areas that have been disturbed by logging and road building. Cattle grazing add cumulative impacts to roadsides, cutting units, temporary roads and skid trails. The EIS must consider the cumulative impacts of all actions on greater sage grouse such as logging, mining, and ORV use, as NEPA requires.

29. We request a baseline, cumulative, historic analysis of native plants. This is necessary to compare historic levels with current condition in a quantitative manner as stated in NFMA's biodiversity requirements. There must be areas that have had natural exclusion that could be studied as a reference point.

30. Have there been any permittee violations of the grazing permits in greater sage grouse habitat? We would like to see a complete documentation of these violations and discussion of the action taken by the BLM, in the EIS. Such a discussion is fully within the scope of the analysis, since compliance with permit conditions is assumed in EIS impacts analyses.

Thank you for your time.

Sincerely yours,

Mike Garrity

Alliance for the Wild Rockies

P.O. Box 505

Helena, Montana 59624

406-459-5936

And on behalf of:

Jason L. Christensen – Director Yellowstone to Uintas Connection
PO Box 363
Paris, ID 83261
jason@yellowstoneuintas.org
435-881-6917

And for
Sara Johnson

Native Ecosystems Council

P.O. Box 125
Willow Creek, MT 59760

and for

Steve Kelly,
Director

Council on Wildlife and Fish

P.O. Box 4641

Bozeman, MT 59772

And for

Katie Fite

Public Lands Director

Wildlands Defense

PO Box 125

Boise, ID 83701

June 13, 2024

Bureau of Land Management
Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101

Re: BLM NEPA Number DOI-BLM-WO-2300-2022-0001-RMP-EIS, *Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning*

Submitted via: https://eplanning.blm.gov/eplanning-ui/project/2016719/510

The American Clean Power Association ("ACP")[1] submits these comments in response to the Bureau of Land Management's ("BLM") Notice of Availability,[2] published in the *Federal Register* on March 15, 2024, regarding the Draft Resource Management Plan Amendment (RMPA) and Draft Environmental Impact Statement (EIS) for Greater Sage-Grouse (GRSG) Rangewide Planning on BLM-managed public lands in California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming.

ACP and one of our predecessor organizations, the American Wind Energy Association (AWEA), have a long history of engagement in BLM's GRSG proceedings. As AWEA, our involvement dates to a December 2011 letter to BLM regarding a draft

[1] ACP is the national trade association representing the renewable energy industry in the United States, bringing together hundreds of member companies and a national workforce located across all 50 states with a common interest in encouraging the deployment and expansion of renewable energy resources. By uniting the power of wind, solar, storage, and transmission companies and their allied industries, we enable the transformation of the U.S. power grid to a low-cost, reliable, and renewable power system. ACP members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, renewable energy supporters, utilities, marketers, customers, and their advocates. Additional information is available at http://www.cleanpower.org.

[2] *Federal Register*, Vol. 89, No. 52, Friday, March 15, 2024, pages 18963 – 18967. 2024-05508.pdf (govinfo.gov)

instruction memorandum on sage grouse management. We have consistently provided feedback on the potential impacts of GRSG planning efforts on the renewable energy sector. ACP appreciates this latest opportunity to comment on the evolution of BLM's management plans for GRSG.

Throughout the history of our engagement on GRSG management planning, our comments have primarily and consistently focused on (1) the need to avoid unnecessary restrictions on clean energy development through landscape-level planning that is not justified by science, (2) concerns about cost-prohibitive mitigation that could potentially hinder our collective progress towards a carbon-free energy future, and (3) emphasis on the importance of including current data on the interactions between GRSG and renewable energy sources rather than guessing about potential impacts based on extrapolations from other industry sectors or datasets and analyses that have limits of inference (e.g., due to small sample size, spatial and/or temporal specificity, confounding factors). Despite multiple plan revisions and approaches over the last eight-plus years, to date, ACP does not believe a reasonable balance has been achieved between conservation of GRSG and deployment of needed clean energy infrastructure. However, ACP is hopeful that this current proceeding and the preferred alternative will find that needed balance, particularly if the concerns ACP identifies below are addressed.

Generally, ACP supports BLM's Preferred Alternative 5 for the following reasons:

A. The proposed changes to exclusion and avoidance zones for habitat management areas (HMA) under this alternative will provide a more balanced approach to conservation and development.
B. The allowance for site-specific exemptions from exclusion areas and disturbance caps offers a flexible framework that promotes responsible development while preserving critical habitats and helping to protect GRSG.

C. Including updated data on the interactions between the GRSG and renewable energy infrastructure ensures that our understanding and management strategies are based on the most recent, accurate, and sector-specific science.

However, ACP has concerns about some portions of the draft, summarized below:

A. The designation of Areas of Critical Environmental Concern (ACEC) specific to the management of GRSG as provided for in Alternatives 3 and 6 is unnecessary as these acres largely overlap with Habitat Management Area (HMA) determinations, which themselves require management actions sufficient to protect GRSG habitats. Further, designating ACECs would automatically exclude those areas from solar development pursuant to BLM's Draft West-wide Solar Programmatic Environmental Impact Statement (Western Solar PEIS).[3] BLM's preferred alternative already provides sufficient protection for sage grouse without the need for ACEC designations.

B. There are inconsistencies in various GRSG maps, which leads to confusion about what areas are or should be avoidance or exclusion zones. In some cases, for example, ACP is aware of areas identified for exclusion in this proceeding where existing project-specific reviews have determined important GRSG habitat is absent. In another case, updated mapping resulting from project-specific discussions between a developer and BLM is not reflected in this proceeding, which has resulted in a mapped exclusion where BLM has already approved development.

C. The draft appears to incorrectly assert that renewable energy development will negatively impact "clean air, health, and safety" due to changes in air quality and greenhouse gas emissions.[4] This assertion is incorrect given the positive

[3] BLM Draft Utility-Scale Solar Programmatic EIS, Table ES-3, Page ES-17. https://eplanning.blm.gov/public_projects/2022371/200538533/20102762/251002762/2023%20Draft%20Solar%20PEIS%20Volume%201%201-10-2024_508compliant.pdf.

[4] BLM, GRSG Draft RMPA and EIS, Volume 1 [4.12.2, page 4-144 and 145], 2024.

environmental and air quality benefits from non-polluting generation resources like wind and solar energy and needs to be corrected.

D. The proposed road and transportation restrictions need to be revised as they may hinder clean energy development, even in areas where project facilities are deemed compatible.

Finally, there are some areas of the draft on which ACP requests additional clarity:

A. The draft does not conclusively demonstrate that the GRSG management actions in the provided alternatives would not preclude solar development across the acres needed to achieve the Reasonably Foreseeable Development (RFD) projections in BLM's Western Solar PEIS. Mapping between these two BLM proceedings needs to be better coordinated and aligned so the implications between the two proceedings can be fully understood by stakeholders.
B. Compensatory mitigation implementation lacks sufficient detail. We urge the BLM to specify which agency shall be responsible for the administration of compensatory mitigation and establish a consistent, transparent, and flexible approach that avoids duplicative efforts at the state and federal levels.
C. While BLM has included a state-by-state analysis of each alternative's impact on "jobs, labor income, and economic output" for geothermal energy, similar data for wind and solar energy is noticeably absent for reasons that are not explained.
D. The draft does not sufficiently emphasize the indispensable contributions of renewable energy to reducing carbon emissions and mitigating climate change, which BLM acknowledges is a threat to sage grouse through habitat impacts and the spreading of disease (notably West Nile virus).[5]

[5] BLM Draft Western Solar PEIS, starting on page 3-9.

Overall, BLM's preferred Alternative 5 represents a notable improvement upon existing GRSG management plan interactions with renewables, and ACP looks forward to seeing a final RMPA that reflects the critical role clean power will play in the protection of our environment now and moving forward, adequately balancing necessary development with conservation needs.

I. ACP generally supports BLM-preferred Alternative 5.

BLM has analyzed six alternatives for the management of clean energy development. However, five of these alternatives either maintain the status quo for clean power or potentially exacerbate the current challenges faced by the clean energy sector. Alternative 5 stands out as the most reasonable alternative that provides for the conservation of sage grouse and their habitat while allowing for compatible clean energy development. ACP supports this alternative for the following reasons:

A. Alternative 5 makes key changes to exclusion and avoidance zones for HMA.

The proposed changes involve reclassifying Priority Habitat Management Areas (PHMAs) from exclusion areas to avoidance areas for utility-scale wind and solar. This change allows for greater flexibility in planning and development, enabling clean energy projects to be considered in these areas while still prioritizing the protection of critical habitats. Similarly, Alternative 5 shifts General Habitat Management Areas (GHMAs) from avoidance areas to areas open to utility-scale wind and solar with minimization and compensatory mitigation requirements.[6] This approach is consistent with the best available science and provides a pathway for clean energy projects to proceed based on site-specific reviews in these areas as long as compatible with species conservation.

[6] BLM, GRSG Draft RMPA and EIS, Volume 1 [Table 2-10], 2024.

ACP has long expressed the need for management actions that avoid sweeping exclusionary zones, in favor of more site-specific reviews to determine compatibility between development and sage grouse conservation. The approach in Alternative 5 allows project developers to work more effectively with BLM to ensure each project is compatible with conservation goals without BLM management actions that unnecessarily inhibit the transition to the clean energy future President Biden has articulated[7] and that states, consumers, and companies have been advancing as well.

B. Alternative 5 allows for site-specific exemptions from exclusion areas and disturbance caps.

Alternative 5 also provides for site-specific exceptions to PHMA exclusion and disturbance caps when certain criteria are met, allowing developers to choose the most cost-effective and accessible sites without disrupting conservation goals. Project-specific and site-specific assessments allow for a more detailed and accurate evaluation of the baseline condition of the landscape, thereby confirming or refuting regional map identifications that are often based on coarser data. This approach provides the most reasonable way based on sound science to assess a project's potential impacts on the environment and sage grouse. This includes the potential for minimization and mitigation options, which can reduce the impact of clean energy development on GRSG habitats. By allowing for these assessments, we can ensure that each project is evaluated on its own merits and that appropriate measures are taken to minimize its impact, rather than using landscape-level determinations that create broad and impenetrable exclusion zones that

[7] The White House, *FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership,* April 22, 2021. https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/

may not be justified by on-the-ground conditions. These changes are directionally consistent with prior ACP recommendations.

Consistent with comments ACP filed in BLM's Western Solar PEIS with respect to transmission, ACP recommends BLM allow, or even prioritize, wind and solar development adjacent to or within existing transmission corridors even in cases that overlap with PHMA, regardless of added impact. Under Alternative 5, co-location with existing infrastructure is exempted from avoidance and exclusion zoning so long as it "will result in no additional impacts to those already associated with the existing major infrastructure, including indirect disturbance to or disruption of adjacent seasonal habitats".[8] ACP is concerned this language would prohibit projects that create new impacts even if they are co-located with existing infrastructure within existing corridors. These areas are paramount to the success of renewable energy buildout and should be included as a listed exemption from avoidance zoning within PHMA under Alternative 5. To this end, ACP proposes that projects sited in proximity to transmission or other existing linear infrastructure such as roads can expect priority application processing. We also recommend a procedural framework for newly proposed transmission lines to qualify for this treatment. Facilitating transmission would enable generation facility installations in lesser quality GRSG habitats or areas without GRSG habitats, reducing the overall impact of renewable energy development on GRSG.

C. *The draft includes updated data on the interactions between GRSG and clean energy infrastructure.*

ACP's preference for Alternative 5 is also based on its alignment with the latest scientific understanding of the interactions between GRSG and clean energy facilities. ACP appreciates that the latest science on the interactions between GRSG and clean energy has been included in the draft. It is critical to rely on the best-available research as it

[8] BLM, GRSG Draft RMPA and EIS, Volume 1 [Table 2-10], 2024.

evolves over time so that BLM's land use planning efforts are informed by current scientific understanding of this relationship.

Studies have found limited impacts from wind energy on GRSG, [9] with some research finding compatibility of solar with GRSG habitat.[10] While the draft does mention the value of extrapolating data from other forms of development to renewable energy infrastructure, [11] such as avoidance of tall structures[12] and the impact of noise in GRSG habitat,[13] the inclusion of data on the known impact of wind and solar on GRSG is valuable and essential. This sector-specific data largely demonstrates that wind and solar have a limited impact on GRSG habitat. When sector-specific science is available, it is more appropriate to utilize that for decision-making than to extrapolate impacts based on other types of development. Locally based exceptions and mitigation, rather than broad exclusion zones, are appropriate for clean energy given the best available science.

Overall, Alternative 5 aligns with the latest scientific understanding of the interactions between GRSG and clean energy and is consistent with ACP's previous recommendations for more project-specific assessments and mitigation options. Alternative 5 offers a balanced, flexible, and science-based approach to managing GRSG habitats and conservation of the species, while facilitating needed clean energy expansion.

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[9] LeBeau, C. W., et. al., Greater sage-grouse habitat selection, survival, and wind energy infrastructure, *The Journal of Wildlife Management*, 81(4), 690–711, 2017. https://doi.org/10.1002/jwmg.21231

[10] Gerringer, M.G., K.T., Smith, and K.L. Kosciuch, Observations of Greater Sage-Grouse at a Solar Energy Facility in Wyoming, Western North American Naturalist, 2022. https://scholarsarchive.byu.edu/wnan/vol82/iss1/21/

[11] BLM, GRSG Draft RMPA and EIS, Volume 1 [2.5.8], 2024.

[12] Pruett, C.L., M.A. Patten, and D.H. Wolfe, "Avoidance behavior by prairie grouse: Implications for development of wind energy," Conservation Biology 23:1253-1259, 2009.

[13] Blickley J. L., D. Blackwood and G. L. Patricelli, "Experimental evidence for the effects of chronic anthropogenic noise on abundance of greater sage-grouse at leks," Conservation Biology 26: 461-471, 2012.

II. Summary of provisions of which ACP recommends for revision or removal

A. ACEC designations specific to the management of GRSG are unnecessary to protect GRSG habitat.

While Alternative 6 includes many of the same elements as Alternative 5, ACP does not support it because it designates 11,139,472 acres as ACECs, which would be exclusion zones for utility-scale wind and solar.[14] This extensive designation of ACECs could unnecessarily hinder clean energy development across the planning region. Many of the ACECs overlap with areas already designated as PHMA or GHMA, which are less restrictive to renewable energy development under Alternative 5. Designating ACECs would turn millions of acres into exclusion zones that are otherwise described as avoidance or open to wind and solar development. BLM should calculate, understand, and make public the impact these potential designations would have on lands available for solar under the Western Solar PEIS - which identifies all ACECs as a resource-based exclusion for solar development - as a part of the final determination. To the extent the ACECs reduce the lands otherwise available for solar under the Western Solar PEIS, ACP believes that is an additional reason to reject ACEC designations in this proceeding.

In 2015, the BLM determined that ACEC designation was not necessary to protect GRSG habitat, as other management actions were sufficient.[15] ACP is not aware of any changes since 2015 that should alter that conclusion. ACP agrees with BLM's view as reflected in the preferred Alternative 5 that the management actions to designate PHMA and GHMA are sufficient to conserve GRSG habitat. There is no evidence in the record to indicate ACECs are necessary and PHMA and GHMA are not sufficiently protective on their own. Therefore, the designation of ACECs could lead to unnecessary prohibition of critical infrastructure development without changing conservation outcomes.

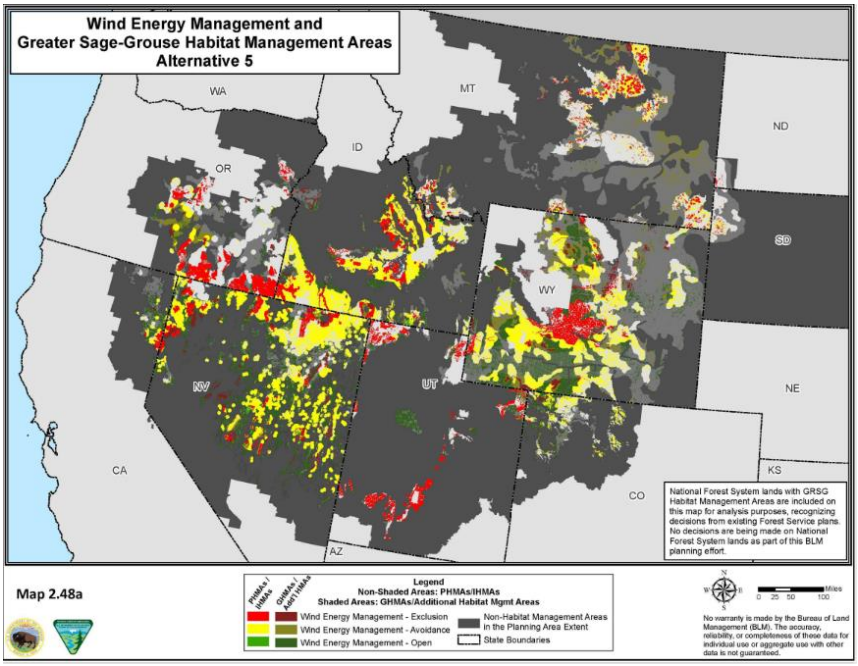
[14] BLM, GRSG Draft RMPA and EIS, Volume 3 [Appendix 5.4.5], 2024.
[15] BLM, GRSG Draft RMPA and EIS, Volume 3 [Appendix 5.4.1], 2024.

B. *Map inconsistencies should be corrected.*

ACP requests a thorough review by BLM to ensure alignment between maps, GIS data, and on-the-ground realities across the planning region. The solar mapping in the draft does not appear to align with current datasets and inaccurately designates some areas as avoidance or exclusion zones. One example of incorrectly mapped exclusion areas occurs within the Esmerelda Seven Solar Projects, which have a Programmatic EIS already in progress, yet the draft RMPA (maps 2.50-2.55) demonstrates they are within an exclusion zone outside GRSG habitat.[16] Based on our analysis, this exclusion area seems to reflect zoning from the 2012 Solar PEIS,[17] which will soon be obsolete given the BLM's upcoming adoption of the 2024 Solar PEIS. ACP recommends that BLM update final maps and data to reflect the most up-to-date information regarding solar avoidance and exclusion zoning, both within and outside GRSG habitat.

ACP is also concerned that maps have not been updated to reflect all current state-level information. One example is in Wyoming, where more accurate mapping of habitat and core areas, such as near the Jackalope Wind Project, was completed; based on this review, the state and BLM staff has identified changes to the core area mapping but these areas remain mapped as exclusions in this proceeding. ACP requests that BLM ensure the final draft includes the most up-to-date mapping information for the planning region. Additionally, the maps associated with Alternative 5 seem to misleadingly portray certain PHMA and GHMA as areas of exclusion (see maps below).[18]

[16] BLM National NEPA Register, Esmerelda Seven Solar Project, https://eplanning.blm.gov/eplanning-ui/project/2020804/510
[17] BLM, 2012 Western Solar Plan, https://blmsolar.anl.gov/solar-peis/.
[18] BLM, GRSG Draft RMPA and EIS, Volume 2 [Maps 4.48a and 2.54a], 2024.


Wind Energy Management and
Greater Sage-Grouse Habitat Management Areas
Alternative 5
WA
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OR
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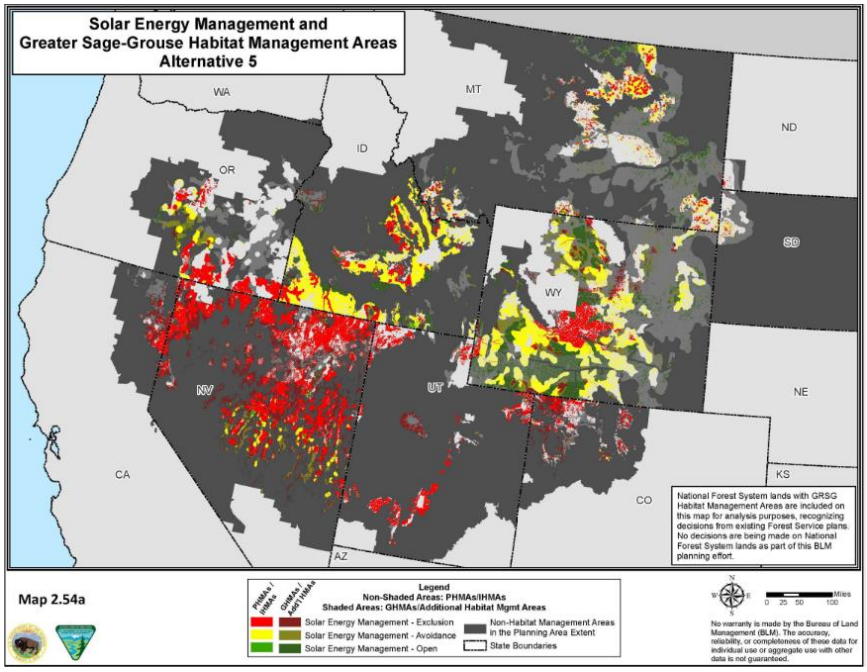
CO
AZ
National Forest System lands with GRSG Habitat Management Areas are included on this map for analysis purposes, recognizing decisions from existing Forest Service plans. No decisions are being made on National Forest System lands as part of this BLM planning effort.
Map 2.48a
Legend
Non-Shaded Areas: PHMAs/IHMAs
Shaded Areas: GHMAs/Additional Habitat Mgmt Areas
Wind Energy Management - Exclusion
Wind Energy Management - Avoidance
Wind Energy Management - Open
Non-Habitat Management Areas in the Planning Area Extent
State Boundaries
No warranty is made by the Bureau of Land Management (BLM). The accuracy, reliability, or completeness of these data for individual use or aggregate use with other data is not guaranteed.


Solar Energy Management and
Greater Sage-Grouse Habitat Management Areas
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National Forest System lands with GRSG Habitat Management Areas are included on this map for analysis purposes, recognizing decisions from existing Forest Service plans. No decisions are being made on National Forest System lands as part of this BLM planning effort.
Map 2.54a
Legend
Non-Shaded Areas: PHMAs/IHMAs
Shaded Areas: GHMAs/Additional Habitat Mgmt Areas
Solar Energy Management - Exclusion
Solar Energy Management - Avoidance
Solar Energy Management - Open
Non-Habitat Management Areas in the Planning Area Extent
State Boundaries
No warranty is made by the Bureau of Land Management (BLM). The accuracy, reliability, or completeness of these data for individual use or aggregate use with other data is not guaranteed.

If these zones on the map are excluded from utility-scale wind and solar development due to other factors such as high-value habitats, breeding grounds (leks), nesting sites, or non-GRSG related factors such as reflection of the 2012 Solar PEIS, then

the legend should clearly specify this. There is currently a substantial discrepancy between the exclusion zones discussed in the draft and those reflected in the map, especially in Nevada/California, Colorado, and Utah. Further, the exclusion zones for solar and wind reflected in the maps differ substantially; the reason for this is unclear. Based on the lack of information provided by BLM regarding the mapping layers used, ACP cannot properly evaluate the full implications of Alternative 5 and the impact it would have on renewables.

C. *The draft incorrectly states clean energy development will have negative impacts on "clean air, health and safety from changes in air quality and GHG emissions."*[19]

Wind and solar energy significantly reduce GHG emissions and air pollution. For example, in 2023, clean power (utility-scale wind, solar and battery storage) avoided more than 477 million metric tons of carbon dioxide emissions for fossil generation, equivalent to removing more than 103.7 million cars from the road.[20] Clean power also avoided the consumption of 233 billion gallons of water that would otherwise have been used for power generation.[21] Lawrence Berkeley National Lab (LBNL) just published a study finding that wind and solar energy provided $249 billion in climate benefits just between 2019-2022, along with a reduction in air pollutants sulfur dioxide (SO_2) and nitrous oxide (NO_x) of 1 million metric tons.[22]

Given this evidence, it appears the inclusion of these statements was an error. If these statements are instead intended to reference impacts of construction activities for clean energy facilities, it should be noted that such activities are relatively short lived, mitigation methods are available to further limit impacts, and any limited, temporary impact is far outweighed by the long-term emissions reductions and benefits that wind and

[19] BLM, GRSG Draft RMPA and EIS, Volume 1 [4.12.2, page 4-144 and 145], 2024.
[20] American Clean Power Association, https://cleanpoweriq.cleanpower.org/
[21] *Ibid*.
[22] Millstein et. al., "Climate and Air Quality Benefits of Wind and Solar Generation in the United States from 2019 to 2022," *Cell Reports Sustainability*, May 29, 2024. https://doi.org/10.1016/j.crsus.2024.100105.

solar provide. Therefore, statements indicating that wind and solar contribute to worsening air quality and GHG emissions should be removed.

D. Road and transportation restrictions may impede renewable energy development even in areas where project facilities are otherwise considered compatible.

In the draft, no new roads or road improvements are allowed in priority habitat in either PHMA or GHMA under any alternative.[23] This presents a potentially significant obstacle to clean energy development in those areas (or even in adjacent lands that are not sage grouse habitat) even if a proposed project was otherwise compatible or low conflict, as road construction is often required to construct and service projects. Limiting availability for travel to current roads further restricts the extent to which other project infrastructure can be sited and designed to minimize overall impacts. Rather than a blanket prohibition, potential compatibility of new roads associated with clean energy infrastructure in PHMA or GHMA should be assessed during project-specific reviews. This concept is similar to the limited exemption for linear infrastructure from certain protected areas in BLM's California Desert Renewable Energy Conservation Plan (DRECP).[24]

III. Recommendations and requests for additional information

A. Documentation is insufficient to conclude that none of the GRSG management actions in the alternatives would preclude achieving solar development across the acres needed to meet the RFD projections in BLM's Western Solar PEIS.

In the GRSG draft EIS, it is mentioned that the acreage identified for potential solar development in the Western Solar PEIS is "usually outside of PHMA." However, there are no corresponding maps overlaying available areas for solar development under the Western Solar PEIS with the PHMA designations in this proceeding to support this statement. To

[23] BLM, GRSG Draft RMPA and EIS, Volume 1 [Page 2-20], 2024.
[24] BLM, Desert Renewable Energy Conservation Plan, 2022, https://www.blm.gov/programs/planning-and-nepa/plans-in-development/california/desert-renewable-energy-conservation-plan

address this gap, the GRSG EIS should include a detailed analysis that quantifies the acreage available for solar development under each alternative presented in the Western Solar PEIS. This analysis should specifically consider how the PHMA designations, as proposed in the GRSG draft EIS alternatives, would impact the availability of these acres. Additionally, BLM should clarify the interaction between the Western Solar PEIS and this proceeding. Although this proceeding states "the Solar PEIS update defers to this GRSG planning effort to decide how solar energy development is conducted in GRSG habitat management areas," the Western Solar PEIS nevertheless includes "greater sage-grouse habitat as identified for exclusion in applicable land use plans" as a resource-based exclusion for solar development, without acknowledging the site-specific, project-specific flexibility contained in Alternative 5. This misalignment between habitat terminology and uses in the Western Solar PEIS and this RMPA proceeding introduces confusion and potential misinterpretation by agency staff and should be clarified.

Furthermore, for a thorough evaluation, the GSGR EIS must clearly delineate the data sources and layers used to classify acres as available or unavailable for solar development. This clarity is particularly necessary for the areas outside the GSGR planning region, as depicted in maps 2.50-2.55. Providing this information will facilitate a comprehensive review of the data and allow stakeholders to understand the implications of the proposed alternatives on future solar development projects.

B. Compensatory mitigation implementation is not described in sufficient detail.

In projects where compensatory mitigation is required, BLM should clearly identify the program through which these efforts will be administered. The draft RMPA suggests that such mitigation should adhere to the regulatory requirements of state agencies and align with established BLM mitigation policies. However, it also states that in the absence of state-level mitigation requirements, the mitigation approach "should minimally meet no

net habitat loss."[25] This guidance implies that the BLM itself would assume the role of enforcing the compensatory mitigation program. To avoid confusion and ensure accountability, the BLM should clarify whether this is the case, and specify which agency will take on the administrative duties for compensatory mitigation requirements. Moreover, the BLM should strive to establish a mitigation approach that is not only consistent and transparent but also flexible enough to accommodate various scenarios without causing redundant actions at both state and federal levels. This approach will ensure that mitigation efforts are effectively coordinated and contribute to the overarching goal of habitat conservation.

C. *Social and Economic Conditions and Reasonably Foreseeable Development Scenarios lack wind and solar economic information*.

While the documents provide a detailed state-by-state breakdown of the impact of each alternative on "jobs, labor income, and economic output" for geothermal energy, similar data for wind and solar energy have not been included in the draft. To date, investments in wind and solar within the planning region have reached $137,506,207, which has helped create 134,594 jobs and generates annual lease payments of $367,397,046.[26,27] These substantial figures are expected to continue to rise with continued development, a trend that is anticipated to persist across the planning region.

Though the draft states that "renewable energy land use authorization requests including wind and solar development have increased and are expected to continue to increase due to the growing demand for renewable energy,"[28] it does not project the number of megawatts (MW) for future wind and solar development even though

[25] BLM, GRSG Draft RMPA and EIS, Volume 1 [Table 2-5], 2024.
[26] U.S. DOE Office of Energy Jobs, United States Energy & Employment Report (USEER), 2023. https://www.energy.gov/sites/default/files/2023-06/2023%20USEER%20REPORT-v2.pdf
[27] Calculated using data from the American Clean Power Association and Lawrence Berkley National Lab Solar, Wind, and Battery Storage reports.
[28] BLM, GRSG Draft RMPA and EIS, Volume 1 [3.9.2], 2024.

commensurate information is provided for geothermal, oil, and gas.[29] It is unclear why this analysis was not included given the nation's ambitious carbon reduction and clean energy goals, as well as BLM's own efforts to increase solar development in the planning area.

The Energy Act of 2020 directs the Secretary of Interior to support national renewable energy goals on public lands and to "seek to permit at least 25 GW [gigawatts] from wind, solar and geothermal projects by 2025."[30] In addition, on May 10, 2023, the Biden Administration called on Congress to expand clean energy targets for federal lands by establishing targets for 2030 and 2035, building on the existing goals established by the Energy Act.[31] Finally, the Biden Administration also announced a goal to "create a carbon pollution-free power sector by 2035 and net zero emissions economy by 2050."[32]

Rapid expansion and deployment of renewable energy infrastructure will be vital if the United States is to meet these goals. Public lands, most significantly lands managed by the BLM, can and must play an important role in this expansion. These lands will also be important in helping meet states' clean energy and greenhouse gas (GHG) reduction targets.[33] California, for example, has a net zero emissions by 2045 statutory target. The California Public Utilities Commission projects a core case of 57.5 GW of solar energy demand by 2045.[34] Oregon has executive set targets to achieve greenhouse gas emissions reductions of 45% below 1990 levels by 2035 and 80% by 2050. Nevada enacted statutory targets to reduce GHG emissions by 28% from 2005 levels by 2025 and 45% by 2030 and to

[29] BLM, GRSG Draft RMPA and EIS, Volume 3 [Appendix 12], 2024.
[30] Energy Act of 2020.
[31] United States Department of the Interior. Interior Department Outlines Roadmap for Continues Renewable Energy Progress on Public Lands, March 20, 2022. https://www.doi.gov/pressreleases/interior-department-outlines-roadmap-continued-renewa(ble-energy-progress-public-lands
[32] *Ibid*.
[33] Center for Climate and Energy Solutions, State Climate Policy Maps, https://www.c2es.org/content/state-climate-policy/
[34] California Public Utilities Commission (CPUC), Rulemaking 20-05-003, Decision Adopting 2023 Preferred System Plan and Related Matters, and Addressing Two Petitions for Modification, Table 4, February 15, 2024, https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M525/K918/525918033.PDF

reach zero or near zero by 2050. Washington enacted statutory targets in 2020 to reduce emissions 45% by 2030, 70% by 2040 and 95% by 2050 compared to 1990 levels. Colorado enacted statutory targets in 2019 to reduce GHG emissions 26% by 2025, 50% by 2030, 65% by 2035, 75% by 2040, 90% by 2045 and 100% by 2050 compared to 2005 levels.

Further, even in states without formal commitments, utilities like Idaho Power are diversifying their portfolios with renewable energy. In their 2023 integrated resource plan, Idaho Power announced plans to deploy 3,325 GW of solar energy between 2024-2043.[35]

D. The draft fails to emphasize the essential carbon emissions-reductions and climate change mitigation that result from renewable energy buildout.

Finally, the draft does not sufficiently highlight the vital role of renewable energy expansion in reducing carbon emissions and mitigating climate change. While it details the direct effects of wind and solar development on the habitat and populations of the GRSG, it overlooks the broader environmental benefits of these renewable resources. Wind and solar energy are pivotal in combating climate change, which poses a significant threat to various species, including the GRSG. According to the draft, "changing trends in temperature, precipitation, and atmospheric CO2 have altered vegetation community composition and species distributions across the western US."[36] Further, wildfires amplify GRSG climate vulnerability, as they can destroy habitat and prevent recovery of that habitat if they recur over time.[37] The intersection between renewable energy development and climate change mitigation is critical and should be addressed comprehensively in the draft to reflect the full scope of renewable energy's environmental significance with respect to impacts to GRSG habitat and populations.

[35] Idaho Power, Integrated Resource Plan, Table 11.1, September 2023, https://docs.idahopower.com/pdfs/AboutUs/PlanningForFuture/irp/2023/2023-irp-final.pdf
[36] BLM, GRSG Draft RMPA and EIS, Volume 1 [3.2.2], 2024.
[37] Audubon, Bird Guide: Greater Sage-Grouse, https://www.audubon.org/field-guide/bird/greater-sage-grouse.

IV. Conclusion

Thank you for this opportunity to comment and for the extensive work that went into preparing the RMPA and DEIS. ACP believes BLM's preferred Alternative 5 is an improvement on the status quo for industry while still providing for conservation of sage grouse and their habitat. ACP strongly encourages BLM to finalize Alternative 5 while also addressing the concerns and clarifications ACP highlights in these comments.

Please don't hesitate to let us know if we can provide any additional information.

Sincerely,

Madelyn Smerillo
Manager, Siting and Permitting

Tom Vinson
VP, Policy and Regulatory Affairs

Quintana Hayden
Senior Director, Wildlife and Federal Lands

Mary Greene
Senior Counsel, Policy

Lindsay Canaday
Coordinator, Policy and Regulatory Affairs
American Clean Power Association (ACP)

page 2 generations
will be able to enjoy! Our ever changing
world needs to preserve habitat for
all native species.
We spend a fair amt of time
in Utah; a beautiful, wild state.
Please, Please! Work to preserve
your special place.

Sincerely,
Cynthia Sims

May 23, 2024

Dear BLM - Utah office,

Alternative #3 has the Best Outcome
for the Greater Sage-Grouse. You are
aware that over 87% of areas throughout
the range had declining populations since
2002. Alternative 3 would update the
habitat management area boundaries
based on new information & Science! We need
to preserve this very special, endangered
species. Please consider what our future

Cindy Sims
160 Dee Vee Dr.
Grand Jct., Co.
81503

GRAND JUNCTION CO 815
28 MAY 2024 PM 1 T

BLM Utah State Office
Attn: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, Utah
84101

Custer County Clerk's Office
PO Box 385
Challis, ID 83226

June 13, 2024

Bureau of Land Management
National Office 1849 C Street NW
Washington, DC 20240

https://eplanning.blm.gov/eplanning-ui/project/2016719/510

RE: Comments from Custer County, Idaho Regarding the Greater Sage-Grouse Draft Resource Management Plan Amendment/Draft Environmental Impact Statement (Draft RMPA/EIS) Issued March 15, 2024

Please consider the following comments from Custer County, Idaho (herein referred to as Custer County), a cooperating and coordinating agency in the current and past sage-grouse NEPA analyses, planning and implementation actions since 2010. All previous Custer County comments on BLM sage-grouse habitat management and related resource issues are incorporated by reference.

We understand that BLM worked hard to collaborate with State biologists and cover a wide range of topics. However, our overarching concern is that BLM has gone backwards. After more than fourteen years of effort to hold our ground, Custer County now has to argue the same issues we successfully debated in the past. Industry groups will have to re-litigate the same issues they already won in court if BLM does not honor agreements reached to date on sagebrush focal areas and other issues.

New science should drive the process forward with new strategies, not backwards toward locking up more land no matter what the economic and biological consequences. Custer County requests consideration of information in several areas listed below.

1. Background

As background, the County has been reacting to federal agency actions regarding the greater sage-grouse (GRSG) since March of 2010 when the U.S. Fish and Wildlife Service ("FWS") issued a listing decision under the Endangered Species Act ("ESA"). The FWS cited an alleged inadequacy of existing regulatory mechanisms as a factor in its warranted but precluded decision. Pursuant to a settlement agreement with activist litigants, the FWS agreed to consider listing the species under the ESA by September 30, 2015.

In the 2010 listing decision, BLM was identified as having a unique ability to conserve GRSG as it manages 51% of GRSG habitat. BLM Resource Management Plans ("RMPs") were identified as an existing regulatory mechanism for GRSG.

Pursuant to the National Environmental Policy Act ("NEPA"), BLM and the U.S. Forest Service ("USFS") drafted amendments for some 98 land use plans across 11 western states including Idaho "to identify and incorporate appropriate GRSG conservation measures…."

Issue #1. FLPMA Multiple Use/Sustained Yield

Custer County has a direct interest in the quality and integrity of the science and decision-making process being used by BLM. Custer County reminds BLM that multiple use and sustained yield are required on public lands, under the Federal Land Policy and Management Act of 1976 (FLPMA).

FLPMA §1702. (h) states that *the term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.*

FLPMA represents a "balance of two vital – but often competing – interests": the "'need for domestic sources of minerals, food, timber, and fiber from the public lands,'" and the protection of "'the quality of scientific, scenic, historical, ecological, environmental, air, and atmospheric, water resource, and archeological values.'" Mineral Policy Center v. Norton, 292 F. Supp. 2d 30, 33 (D.D.C. 2003) (quoting 43 U.S.C. §§ 1701(a)(12) and (a)(8)).

When Congress enacted FLPMA they intended outputs of AUMs, timber harvest, mineral production and other yields to be sustained at current levels. Every unmitigated cut in AUMs, board feet of timber, oil leases, mining permits and other land uses violates the key tenants of FLPMA. Sustained yield means the "same yield" over time - nothing less/nothing more.

Custer County is heavily invested in ensuring a balance between the needs of sage-grouse conservation and appropriate multiple use of Federal public lands. In reviewing the current BLM Sage-Grouse Draft RMP/EIS, Custer County found it represents a partial presentation of scientific information and justifies a highly restrictive range of preferred conservation measures and policies that do not meet the intent of FLPMA and NEPA. Custer County realizes that locking up land is not helping change the sage-grouse population trends. Agencies need to look at all interrelated aspects of sage-grouse population biology more objectively including increasing cooperative predator control strategies.

Among the serious shortcomings described herein, the Draft RMPA/EIS lacks the adequate analysis required by NEPA in relation to the significant decline in multiple use and sustained yield that are already occurring and will continue to occur if any of the action alternatives are implemented. A broader range of alternatives is needed to account for the complex issues surrounding GRSG populations to assure robust use of all available tools to address limiting factors without shutting down multiple use.

The current NEPA analysis is also inadequate in analysis related to significant adverse impacts to private property due to forcing more of society's need for food, power and minerals onto private lands.

Custer County constituents engage in ranching, grazing, mining, and energy development on multiple-use federal, state and private lands within the County. The County and its constituents provide domestic sources of minerals, food, timber and fiber from public lands. They rely on these activities for their economic viability with the understanding that the quality of the environment can be protected at the same time. The County sees the BLM draft RMP/EIS as legally inadequate in relation to compliance with FLPMA's multiple use and sustained yield mandates.

By minimizing and generalizing impacts, BLM fails to adequately provide the type of information necessary for the general public and BLM decision makers to comprehend the significant adverse impacts of the various alternatives.

The management restrictions, regulatory measures, and closures recommended in the Draft RMP/EIS violate FLPMPA. BLM completely misses the mark on the analysis of multiple use and sustained yield.

It appears that BLM employees have lost the ability to be objective. They are told what to do, how to think and what is acceptable. Their "group thinking" and "echo chambers" inhibit their ability to see the situation for what it is. Locking up land is not saving sage-grouse.

Locking up land is what environmental activists want. However, environmental activists want the lock ups for reasons unrelated to sage-grouse. Sage-grouse are just a convenient tool to implement the latest United Nations agenda, which environmental activists support for a variety of reasons unrelated to sage-grouse.

The hands-off approach to land management that permeates the current NEPA alternatives will result in more pressure for private landowners to accommodate activities that will be restricted or banned from federally managed lands due to sage-grouse habitat protection measures. Implementation of the current range of alternatives triggers significant unanalyzed adverse impacts to private lands.

The result of implementing any of the action alternatives requires a more objective analysis of multiple use and sustained yield. The economy and future viability of countless communities, local governments, small businesses, family farms and ranches, mining enterprises, electricity and oil and natural gas development in the West require additional analysis.

The outcome of this NEPA analysis includes profound and particularized impacts to Custer County and its constituents that has not been adequately and fairly addressed, in violation of NEPA.

Page ES-1

"The BLM has prepared this Draft Resource Management Plan Amendment (RMPA)/Draft Environmental Impact Statement (DEIS) to analyze potential amendments to specific GRSG goals, objectives, and management actions contained in 77 existing RMPs to enhance GRSG conservation through management of

GRSG habitats on BLM-administered lands. These amendments seek to continue providing the BLM with locally relevant decisions that achieve rangewide GRSG conservation goals consistent with the agency's multiple use and sustained yield mission, and GRSG management efforts with Federal, State, local, and Tribal partners. The ten-state planning area includes nearly 121 million acres of BLM-administered public land. GRSG habitat management areas occur on approximately 69 million acres and are the focus of this effort."

Comment: Though the intent may have been to be "*consistent with the agency's multiple use and sustained yield mission"*, the result certainly is NOT consistent with that mission. Instead, the agency is creating hands off management close to de facto wilderness on up to 97% of potential sage-grouse habitat. Multiple use and sustained yield need to be addressed more subjectively and in additional detail throughout this NEPA process. BLM can't just say it is complying with multiple use and sustained yield, then document significant reductions in AUMs, acres of land available for renewable energy and other reductions in acres of land available for multiple uses.

Issue #2 – Influence of Environmental Activists on Land Management Policies

Page ES 3
"*Due to the U.S. District Court of Idaho's preliminary injunction preventing implementation of the 2019 amendments (see explanation in Alternative 2 summary below) this alternative reflects how the BLM is currently managing GRSG habitat on public lands."*

And Page 1-2 "*On March 31, 2017, the US District Court for the District of Nevada held that the BLM violated the National Environmental Policy Act of 1969, as amended (NEPA), by failing to prepare a supplemental environmental impact statement (EIS) for the designation of sagebrush focal areas (SFAs) and other changes in habitat management areas in the 2015 Nevada and Northeastern California Greater Sage-Grouse Resource Management Plan Amendment.*

And Page 3-41 "Because of litigation, the BLM released another Final PEIS/Proposed RMP Amendment in November 2012 and accompanying ROD in March 2013.

Comment: Federal agencies including the BLM can't appease environmental activists but continue to try. Multiple use advocates won the argument against Sagebrush Focal Areas in court years ago. BLM is now capitulating to radical environmental factions that did not like the 2017 court decision. Custer County opposes any further consideration of Sagebrush Focal Areas.

The situation continues to get worse for private landowners, local governments and federal agencies. It is time for BLM to comply with current laws including FLPMA. BLM can appeal to USFWS and Congress if necessary to change laws so they stop the constant litigation that is leading to the demise of the sage-grouse, spotted owls and other species.

Just like the spotted owl, sage-grouse are worse off now than they were before environmental groups forced federal agencies to impede multiple use and sustained yield. The most obvious problem is the increase in

fuel loads and predators as environmental activists continue their war on livestock grazing and predator control.

In the case of the spotted owl, the good news is that the Department of Interior has come full circle and admitted they were wrong about habitat management and limiting factors. When the federal biologists stopped listening to radical environmental groups and went back to using science, they realized that foresters had been right all along – federal land managers need to harvest timber to reduce fuel loads and limit megafires. Common sense habitat management, not hands-off "tree hugging", has been proven necessary to support spotted owl conservation (Gavin et al, 2021 **https://doi.org/10.1002/fee.2450**).

Custer County believes that same thing will happen with sage-grouse. When federal biologists stop listening to overzealous environmental groups that want to stop fossil fuel production and protect every predator, BLM can get back to objective science. Custer County encourages BLM to take a fresh look at sage-grouse management and all aspects of biology. Habitat may not be the most limiting factor.

We believe the decline in sage-grouse being observed is more complex than the BLM mantra about lost acreage. Custer County requests BLM work with State biologists and University of Idaho sage-grouse researchers to consider the combination of threats: 1) reduced livestock grazing that has resulting in increased fuel loads and fire danger, similar to spotted owls; 2) excessive handling of sage-grouse by researchers; and 3) the cyclic nature of game birds and predators.

BLM and other federal agencies need to move forward positively by revising the Draft RMPA/EIS to demonstrate that the federal agencies were implementing their existing laws, regulations, policies and manuals including sensitive species directives better prior to the 2010 proposed listing of the sage-grouse, than now.

Why are Washington DC level federal agency managers continuing to agree to environmental demands that are based on stopping fossil fuel extraction? Don't upper level federal agency personnel understand that the Endangered Species Act is just a convenient tool for environmental groups that want to accomplish goals that have little to do with true species protection issues? Like the spotted owl habitat issue, the proposed solutions for sage-grouse and their habitat result in increased predation as well as additional sage-grouse habitat loss due to wildlifes.

ES – 5

"This allows the BLM to select the best strategy that incorporates appropriate GRSG habitat management actions to meet the RMP goals and objectives, is consistent with the purpose and need, is in accordance with the agency's mandate to manage public lands for multiple use and sustained yield and aligns with state and local plans and policies to the extent possible."

Comment: Custer County's Comprehensive Plan is attached herein to assure the NEPA document aligns with said Plan (Attachment A).

Alternative 5 aligns with the County Comprehensive Plan better than other alternatives in relation to multiple use and sustained yield, but still does not meet the intent of the FLPMA's Multiple Use clause. Alternative 3 is the most egregious in its complete abandonment of multiple use and sustained yield principles. BLM should have discarded Alternative 3 during scoping since it fails to address the BLM mission of multiple use and sustained yield. The fact that radical environmental agendas continue to bring court cases that ignore Congressional multiple use and sustained yield directives needs to be addressed.

Custer County recommends a more objective discussion of multiple use and sustained yield for each alternative. Any unmitigated reduction in yield is, by definition, a violation of FLPMA.

ES-6

"All the BLM's alternatives comply with the direction in FLPMA that public lands be managed "on the basis of multiple use and sustained yield" (FLPMA Sec. 102(a)(7)). Beyond that, an alternative that does not avoid disturbance eliminates the primary tool research has shown protects GRSG and their habitat, and therefore would not be consistent with the purpose and need. In addition, all the alternatives considered in detail apply the full mitigation spectrum of avoiding impacts, then minimizing effects if avoidance is not possible, and then providing compensatory mitigation for residual effects."

Comment:
BLM states that mitigation and minimization plus compensatory mitigation assure compliance with FLPMA's multiple use and sustained yield mandates. This is simply not true. The "death by a thousand cuts" concept is alive and well here.

Like many multiple uses, livestock grazing AUMs continue to decline under all alternatives considered in the current NEPA analysis (Table 2-12). BLM provides virtually no mitigation to livestock owners. The sustained yield mandate is not being met. The EIS/RMP tables regarding AUMs and other outputs prove this statement yet the EIS/RMPA analysis for some reason states that BLM is complying with sustained yield. Custer Couty requests a more objective analysis of the meaning of sustained yield and more objective use of the term throughout the EIS/RMPA.

For BLM not to recognize this simple fact that is true across all ten states affected by the current NEPA process is extremely frustrating to a large sector of the public. The lack of objectivity regarding sustained yield is apparent to anyone that understands livestock grazing and other multiple uses of federal lands in the western USA. Custer County requests more involvement of county governments in economic impact assessments to assure objectivity.

ES-7
"ACECs under Alternative 3 would have the most restrictive management, thus providing the greatest level of protection to the GRSG habitat in these areas, but reduce flexibility in application of the BLM multiple use mandate."

Comment: BLM needs to be more objective in their terminology. Implementation of Alternative 3 doesn't just "*reduce flexibility in application of the BLM multiple use mandate*", it flat out DOES NOT MEET FLPMA's multiple use and sustained yield mandates. Please rewrite the sentence above to provide objectivity in place of a carefully worded sentence that states that BLM is complying with the law, when the agency is not in compliance. Throughout the entire document, the valid existing rights issue needs to be rewritten. There should be no understating of impacts.

BLM specialists have a duty to inform decision makers of consequences to various NEPA alternatives analyzed. The failure of the current analysis to objectively detail adverse impacts will result in uninformed decision making at all levels, negating the purpose of NEPA.

Page 1-3

"*The Monitoring Report also estimated habitat loss of less than one percent in GRSG Priority Habitat Management Areas (PHMA) – and Important Habitat Management Areas (IHMA) in Idaho – due to anthropogenic disturbance. This loss is less than what scientific literature has identified as the threshold where GRSG abandon leks (Knick et al., 2011; Leu and Hanser 2011; Knick et al., 2013; Kirol et al., 2020).*

Custer County Comment: The BLM states that there is "less than one percent" loss of Priority and Important Sage-Grouse Habitat in Idaho. Our question to BLM is why are sage grouse population numbers down? We recommend BLM spend more time studying predator increases, weather, fuel load increases due to livestock reductions and excess handling of grouse by researchers.

The amount of sage-grouse habitat loss in Idaho has been insignificant yet BLM states habitat loss as the primary cause of sage-grouse declines. In an effort to make their lives easier, BLM jumped on one threat (habitat loss) and took it to an extreme, hand in hand with environmental activists.

Like the spotted owl, the myopic view of the BLM is hindering scientific habitat management. The BLM is attempting to justify the proposed measures to restrict land use on the wrong parameter, just like federal agencies did with the spotted owl. In both cases, the species decline is due to federal biologists downplaying real threats in order to appease litigants.

The Draft RMPA/EIS and previous BLM sage-grouse planning efforts have been an overzealous reaction to a series of false or exaggerated assumptions about habitat. Facts prove that sage-grouse actually fly long distances (75 to 125+ miles). The way BLM treats the birds, you would think their feet were nailed to the ground.

Facts prove that sage-grouse and livestock grazing are compatible and complementary (see Courtney Conway Ph.D., Professor of Wildlife Sciences, Unit Leader of the Idaho Cooperative Fish and Wildlife Research Unit, University of Idaho, 208-885-6176, cconway@uidaho.edu) yet BLM listens to Western Watershed activists instead of university research. The livestock industry will continue to suffer due to the BLM attempts to appease Western Watershed activists, fuel loads will continue to build and wildfires will

increase in size and intensity. Food prices will continue to rise. Sage-grouse may continue to decline because the real limiting factors fail to get addressed.

Sage-grouse populations and habitat in Idaho have NOT declined enough to warrant the current amount of special action by the federal government. Genetic studies clearly show the bird is not threatened with extinction. These birds fly long distances and intermix with other sage-grouse populations (Cronin et al.)

Projections about the number of roads per section of land, threats from oil and gas drilling methods and livestock grazing, have led BLM personnel to spend a tremendous amount of time and energy developing a convoluted series of protective measures that are clearly NOT helping sage-grouse. The vast majority of Idaho's sagebrush has limited human impacts. The reason for declines in sage-grouse population numbers is not as simple as BLM is concluding in the current NEPA analysis.

Page 1-7 "*The RMPA will recognize valid existing rights."*

Comment: "Valid existing rights" include property rights found in grazing permits, the right to explore and mine on federal lands, and the inalienable right to the pursuit of life, liberty and happiness here in the USA. Please explain how these rights are recognized. It appears that all "valid existing rights" were set aside when the politicians and federal agencies tried to appease environmental activists that choose the sage-grouse as a tactic to fight fracking and other fossil fuel extraction. The entire "save the sage-grouse" campaign has now snowballed into a campaign to "shut down multiple use and sustained yield" on federally managed lands. The onerous RMP/EIS restrictions do not recognize valid existing rights, even those of private property owners, when they place a 3% development cap on all land and include private property in their equations.

Page
5-3 – Cooperating Agencies

Comment: The Draft RMPA/EIS violates NEPA in that it did not provide Custer County a true "seat at the table" as a local government and as a cooperating and coordinating agency. Instead, BLM held "cooperating agency meetings" as a minor checkbox item on their NEPA compliance list, with little interest in providing meaningful interaction with cooperating and coordinating agencies such as Custer County. BLM refused to deliver information before meetings, BLM did not share their PowerPoint presentations willingly. Instead, BLM would quickly go through extremely detailed maps with no identifying geographical references other that state boundaries, 20+ page spreadsheets with very small font, and detailed data that they would refuse to provide Custer County. The BLM approach to confidentiality and convenience at their end made many of the cooperating agency meetings virtually meaningless.

Not only did the BLM refused to provide copies of the material they showed on the computer screen during Zoom meetings with Custer County and others, BLM also ignored Custer County FOIA request letters. There were certain people on the BLM sage-grouse team that displayed a level of arrogance that was the opposite of cooperating and coordinating in its nature. The BLM has consistently ignored the bulk of Custer County's verbal and written comments. Due to pressure from more than just Custer County, BLM has taken

steps to address the fact that predation is a real issue across the entire analysis area. Predation affects the survival and long-term viability of sage-grouse throughout their range.

The top down, the Washington DC Draft RMPA/EIS is another effort to work with radicalized anti-livestock grazing and anti-fossil fuel factions to appease litigants at the expense of the people living and working in the western states affected by the sage-grouse decisions. The Draft RMPA/EIS is a political answer to a biological issue. BLM is choosing to help environmental activists that foster policies that force renewable energy and wilderness on this country no matter what the costs. The sage-grouse is merely the pawn in the activists' gameplan.

Why do BLM personnel in Idaho and other western states try to appease politicians and environmental activists instead of strongly defending their multiple use/sustained yield mission and sound biological principles?

Why isn't BLM addressing the cumulative impact throughout the entire western United States and beyond in relation to where solar, wind and other renewable energy projects will be banned on federal lands due to Endangered Species Act concerns for all listed and proposed species plus the sage-grouse and what that means to private land? Where is the nationwide map showing GRSG plus other species habitats that are off limits to renewable energy? Where is the nationwide map showing where renewable energy projects will be built to meet demand as fossil fuels are taken offline? Is there enough land that does not have endangered species issues to meet the country's demand for renewable energy? If not, we should slow down and make a better plan for the future of energy production.

Issue #3 Economic Impacts including Cumulative Impacts of ALL Listed and Proposes Species

Comment: The DEIS violates both the NEPA the Regulatory Flexibility Act requirements for detailed analysis of socioeconomic and environmental justice impacts. Economic freedom is the foundation for individual success and prosperity. This freedom is evident in the entrepreneurial small business sector, which creates most of the new jobs and a large share of the innovations in the American economy. When the government takes small businesses into consideration in developing regulations, it saves time and money for the nation's most productive sector.

Executive Order 13272, signed August 13, 2002, gave federal agencies practical direction in their efforts to assess the impact of their proposed rulemakings on small businesses and other small organizations under the Regulatory Flexibility Act (RFA). The private property owners that will be most affected by the decisions in the current NEPA process are small businesses.

Both NEPA and the RFA require agencies to examine public policy issues using an analytical process that identifies, among other things, economic impacts. The RFA in particular requires federal agencies to address barriers to small business competitiveness. NEPA and the RFA seek a level playing field for small entities, minorities and low-income individuals. The implementation of measures proposed in the Draft RMP/EIS would be a barrier to small business competitiveness as well as minorities and low-income individuals. The next version of the RMP/EIS must address this disparity.

Custer County and many of the businesses within the County are small entities by definition, in the RFA. Virtually all of the farms and ranches within Custer County qualify as small entities in the RFA and Dodd Frank regulations. Minorities and low-income individuals that work on farms and ranches within Custer County will be adversely affected by the actions proposed within the Draft RMPA/EIS.

It is the opinion of Custer County Board of Commissioners that the current NEPA analysis ignores the fact that every time a small entity such as a farm or ranch or the County itself loses a portion of its income due to federal regulations the cost of credit increases. The current Draft RMPA/EIS does not address this topic but must address the RFA, to comply with the law.

The BLM and USFS must include "a description of the steps the "agency has taken to minimize any additional cost of credit for small entities." The analysis needs to add information about the cumulative impacts of the sage-grouse land use restrictions on top of all other Endangered Species Act protections (salmon, steelhead, bull trout, lynx, grizzly bears, wolves, caribou, cuckoos and more).

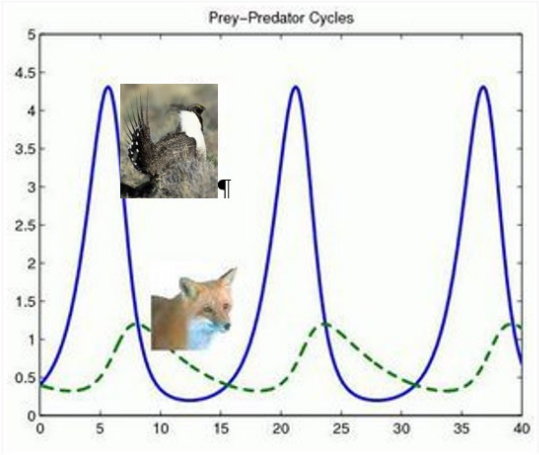
Issue #4 Existing Valid Rights

Chapter 2, Tables 2-4 and 2-5

Comment: Valid existing rights are discussed. Where are the maps clearly displaying this information at a level that private landowners can understand? The public has a right to know the impacts of various alternatives within this NEPA analysis at a land ownership parcel level. Please provide online maps that provide enough detail so readers can zoom in to the single landowner parcel level. All maps in the current RMPA/EIS need geographical locaters beyond State boundaries. Please add counties, roads and cities.

Issue #5 Predator – Prey Relationships

Comment: Include biology regarding predators and prey in the RMPA/EIS discussion regarding population numbers. It appears that BLM biologists want sage-grouse populations to be stable over time. They create goals based on small declines in sage-grouse populations. However, they do not account for the fact that sage-grouse fluctuations of 50% or more are common in the boom and bust world of predators and prey. Will predators be reduced or eliminated to assure the prey remain stable? Will abnormally high numbers of predatory ravens continue to be allowed to eat sage-grouse eggs and chicks, unchecked?



Predator/Prey Cycle

The graph above displays a cycle many wildlife biologists are currently downplaying. Federal biologists forget that sage-grouse, like other game birds, have large swings in population numbers over time. The agency oversight simplifies population goals. So, biologists flatten Bell curve data and choose what they call "population numbers". If those population numbers start to decline, the decline triggers penalties on land uses. Litigation has forced BLM and other agency biologists to create numerical goals for the ease of expressing triggers as percentages of population goals. This artificial way of looking at sage-grouse populations creates an appearance of stability in the birds' population over time. BLM needs to better reflect natural upward and downward cycles in GRSG population numbers.

Custer County recommends BLM discuss biological predator-prey cycles in detail and adjust GRSG population goals to account for these cycles. If sage-grouse populations are declining more than BLM is comfortable with, one tool in the toolbox is predator control. However, the same environmental activists that tell BLM and State agency biologists to protect sage-grouse also want biologists to protect predators that eat sage-grouse and their eggs. Predator control is a tool to wildlife biologists that should be allowed.

BLM biologists should not listen to environmental activists that advocate for removing cattle from the land, which increases fuel loads, creating the perfect conditions for hotter fires that destroy sage-grouse habitat. The Western Watersheds anti-livestock rhetoric creates the perfect conditions for wildfires. Environmental activists then often blame the wildfires on "climate change" instead of their anti-livestock stance.

Custer County believes BLM is protecting too much land as if it is wilderness in the name of sage-grouse only to create conditions that make sage-grouse more vulnerable to wildfire. Though BLM does address livestock grazing as a fuel reduction tool, the alternatives still reduce AUMs.

Custer County recommends sage-grouse habitat fuels management through livestock grazing, predator control, less human contact with sage-grouse and fewer planning efforts that revisit settled issues such as sagebrush focal areas.

Issue #6 – Wildfires

The biggest threat to sage grouse habitat is wildfire. It destroys more habitat than anything else. The management practice that prevents those rangeland fires from spreading is livestock grazing. BLM recognized this in the RMPA/EIS but they still bend to the politics of the anti-grazing activists by recommending AUM reductions.

Issue #7 – Irrigated Croplands

There were fewer sage-grouse, deer, elk and other wildlife before settlers moved into the Salmon River Valley and began irrigating croplands. Timber came down onto valley floors before it was harvested to build barns, fences, homes and stores. As trees were cut and crops were watered, sagebrush encroached on valley floors adjacent to farms. Sage-grouse multiplied with the new diversity of shelter and food. Livestock grazing helped create mosaics of diverse habitat more suitable for sage-grouse than decadent single age sagebrush stands.

Issue #8 – Loss of Private Agricultural Lands

The DEIS documents significant adverse impacts to ranches. The actions proposed in the DEIS will put some ranches out of business and create subdivisions, industrial parks, data centers, renewable energy farms and manufacturing facilities where open space now dominates the landscape. The BLM discusses this issue but understates the significant adverse impacts of thousands of acres of sage-grouse habitat, seed and crops for sage-grouse, meadows, water, and diversity that will be destroyed as ranches are sold to developers.

The environmental activists that were supposed to care about the environment have been fooled into thinking what they are doing is the right thing to protect their interests. They don't seem to realize that their actions turn their good intentions into disastrous wildfires due to lack of vegetative management, water shortages due to dam removals, and drier conditions due to lack of vegetation due to overly hot wildfires.

When BLM decision makers don't have all of the data, they aid and abet environmental activists by making bad land management decisions that threatened wildlife including sage-grouse, in their efforts to thwart litigation. The environmental movement has destroyed more land than it saves.

The spotted owl habitat protection measures and resultant catastrophic fires are the fault of environmental activists and federal agency personnel whose unscientific rhetoric resulted in a hands off approach to timber harvest and a subsequent fuel load that was significantly higher than normal. The spotted owl demise is human caused, not climate change. The sage-grouse will go the same way if federal agency biologists don't speak up in court.

Therefore, Custer County requests BLM go forward with a more rigorous analysis of the current situation, threats and alternatives.

The best available science indicates that BLM should be far more flexible and adaptive in its approach to GRSG habitat enhancement. Among other things, BLM should consider allowing state, local, and private GRSG conservation plans and efforts to be more innovative and forward thinking, instead of severely constrained by BLM land use restrictions.

The information disseminated should be corrected upon consideration of the most recent or thorough information from stakeholders, the public and the scientific community.

Respectfully Submitted on Behalf of Custer County, Idaho
Board of Commissioners

Mary Darling, Natural Resource Consultant
Darling Geomatics

Staff

Ted Koch, Executive Director, *Idaho*

Terry Riley, PhD, **Policy Director**, *Colorado, Certified Wildlife Biologist ®*

Jodie Provost, Communications Director, *North Dakota, Certified Wildlife Biologist ®*

Board of Directors

Jon Haufler, PhD, **President**, *Montana Certified Wildlife Biologist ®*

Lew Carpenter, Vice President, *Colorado*

Steven Riley, Secretary, *Nebraska, Certified Wildlife Biologist ®*

Dan Cecchini, Jr., **Treasurer,** *Oregon*

James Rice, PhD**,** *Wisconsin*

Rollin Sparrowe, PhD, *Wyoming, Certified Wildlife Biologist ®*

Andrew Bogan, PhD, *California*

Willard Heck, *New Mexico*

Chris Madson, *Wyoming*

Ralph Rogers, *Montana*

James Weaver, *New Mexico*

Quenton McEntee, *South Dakota*

North American Grouse Partnership
P.O Box 343
Garden Valley, ID 83622

Email:
NAGP@GrousePartners.org

Website:
www.grousepartners.org

Facebook:
www.facebook.com/GrousePartners

Instagram:
www.instagram.com/na_grouse_partnership

June 11, 2024

Sharif Branham, Assistant Director for Resources and Planning
Bureau of Land Management
Utah State Office
ATTN: HQ GRSG RMPA
440 West 200 South #500
Salt Lake City, UT 84101
BLM_HQ_GRSG_Planning@blm.gov

Re: Greater Sage Grouse Draft Environmental Impact Statement

NEPA Number: DOI-BLM-WO-2300-2022-0001-RMP-EIS

Mr. Branham,

The North American Grouse Partnership submits its comments to the Bureau of Land Management (BLM) on the 2024 Greater Sage Grouse Draft Environmental Impact Statement (hereinafter Sage-Grouse EIS). It is our understanding that the final EIS will result in amendments to 76 resource management plans across the 67 million acres of federal public land. The sagebrush biome is at the critical juncture of whether it continues to be a functional ecosystem. The time to arrest decline of the system is short. It is experiencing a sustained loss of high quality sagebrush of about 1.3 million acres per year.

Sage-Grouse populations have continued to decline during the last decade. Recent science supports BLM developing new plans to allow decisive action to provide lasting benefits for Sage-Grouse and sagebrush habitat. We believe a variety of science-based refinements are needed to advance the BLM's responsible stewardship of these lands.

The North American Grouse Partnership (NAGP) is a 501(c) (3), not-for-profit organization created to address the challenges facing grouse species across North America. The NAGP is the only conservation organization dedicated to the future of all 12 of North American grouse species. Our mission is to promote the conservation of grouse and their habitats through science, policy, partnerships, and management. We work through partnerships to ensure sound policy for grouse, provide professional consultation, and help deliver on-the-ground conservation that benefits grouse and their habitats. We believe science is the foundation of good grouse management and conservation must be at the landscape-scale. Our focus is not only on the birds but also the landscapes they inhabit and the human connections.

Maintaining large, spatially diverse, and connected landscapes should be top priority. Recent research on Greater Sage-Grouse genetics has demonstrated the importance of maintaining habitat corridors to allow for genetic connectivity between larger populations (Row et al. 2018, Cross et al. 2023, Zimmerman et al. 2023). Available science suggests that these are as are critical to Greater Sage-Grouse population persistence. We believe the BLM should designate these connectivity corridors as Priority Habitat Management Areas (PHMA), which are defined as "the highest value to maintaining sustainable Greater Sage-Grouse population".

Habitat loss has been identified as the primary driver of population declines in the Greater Sage-Grouse (Connelly and Braun 1997, Aldridge et al. 2008, Wisdom et al. 2011). Recent research demonstrates that loss and degradation of sagebrush habitat continues (Doherty et al. 2022) and sage-grouse continue to decline annually, on average, by 3.1% (Coates et al. 2021, Prochazka et al. 2024). Greater Sage-Grouse populations will not stabilize if widespread sagebrush habitat loss continues across the range. We believe that the BLM must adhere to the principle of "no net loss" (NSO) of healthy sagebrush habitat in PHMAs and in General Habitat Management Areas (GHMA).

Scientific research studies on Greater Sage-Grouse have shown clearly that habitat use, particularly nesting, is associated with lek locations (Connelly et al. 2000, Holloran and Anderson 2005). Research conducted by Coates et al. (2013) suggests that a 3.1-4.7 mile buffer around leks contained 95% of known nest sites. Another study found that 90% of nest sites were within 3.1 miles of the nearest occupied lek (Dahlgren et al. 2016). However, Holloran and Anderson (2005) found that a 1 mile buffer around leks only contained about 25% of the known nest sites. The best available science supports a 3.0 mile NSO buffer to prevent lek abandonment and protect the majority of the nesting and early brood-rearing habitat surrounding an occupied lek (Knick and Hanser 2011, Knick et al. 2013, Coates et al. 2013). Therefore, we recommend that the BLM enforce a 3.0-mile NSO buffer around all known Greater Sage-Grouse leks in both PHMAs and GHMAs.

Livestock grazing occurs across most Greater Sage-Grouse habitat on BLM lands and can affect habitat quality. Recruitment of juvenile sage grouse to older age classes is also dependent on habitat quality and is important for maintaining and expanding Greater Sage-Grouse populations. Nest success and chick survival are currently well below species-wide population maintenance levels (Connelly et al. 2000, Aldridge and Brigham 2002, Frey et al. 2013). Many of the existing sagebrush communities across the western U.S. lack resilience and will be difficult to restore (Wisdom and Chambers 2009, Pyke 2011).

A report by Public Employees for Environmental Responsibility (PEER 2022) examined rangeland health conditions of the 155,000,000 acres of leased livestock allotments managed by the BLM. The data reveal that overgrazing by livestock is the most significant cause of failure of the allotment to meet the agency's Rangeland Land Health Standards (LHS). We recommend that the BLM work with producers to adjust livestock grazing systems (active animal unit months [AUMs], timing, intensity, duration or frequency of grazing) wherever overgrazing is a primary cause of failure to meet or exceed LHS.

The main effect of overgrazing is serial disturbance of landscapes that allows invasive annual grasses such as cheatgrass to infiltrate the understory of sagebrush canopies (Leopold, 1949). Cheatgrass persists this way for decades until an inevitable fire - made more likely by dense pockets of cheatgrass - eventually burn and turn entire stands of sagebrush into stands of cheatgrass. These stands then burn more frequently, making recovery of sagebrush very difficult. We urge the BLM to focus on stopping cheatgrass dominance by stopping overgrazing in collaboration with livestock operators, who don't want cheatgrass either.

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We appreciate the opportunity to provide meaningful input on this important process. Our goal is to ensure that the final BLM EIS and plans are informed by the best available science.

Please feel free to contact me if you have questions or need additional information. Citations are available upon request.

Sincerely,

Ted Koch, Executive Director

North American Grouse Partnership

208-912-5233
ted@grousepartners.org

The mission of the North American Grouse Partnership is the conservation of grouse and their habitats through science, policy, partnerships, and management.

SARATOGA-ENCAMPMENT-RAWLINS CONSERVATION DISTRICT

SARATOGA-ENCAMPMENT-RAWLINS CONSERVATION DISTRICT

101 Cypress Avenue P.O. Box 633 Saratoga, WY 82331
Phone: 307-326-8156 www.sercd.org

June 13, 2024

Tracy Stone-Manning, Director
Bureau of Land Management
1849 C St. NW
Washington, DC 20240

Submitted Via: eplanning.blm.gov

RE: Draft Resource Management Plan Amendment and Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning

Dear Director Stone-Manning:

The Saratoga-Encampment-Rawlins Conservation District (SER CD or District) appreciates the opportunity to participate as a cooperating agency throughout the National Environmental Policy Act process for continued Greater Sage-Grouse (GRSG) conservation and land management issues. We understand the Bureau of Land Management (BLM) is asking for public comments on the notice of availability of the Draft Resource Management Plan Amendment (RMPA) and Environmental Impact Statement (EIS) for Greater Sage-Grouse (GRSG) Rangewide Planning (Draft RMPA/EIS) and on the BLM's consideration of potential areas of critical environmental concern (ACECs).

The SER CD's comments are specific to our mission as a local government entity with special expertise pertaining to the Draft RMPA/EIS: "develop and direct programs to promote long-term conservation and enhancement of our natural resources while contributing to the economic stability of the district and its residents." Wyoming conservation districts have state statutory authority related to the conservation of soil and water resources, control and prevention of erosion, conservation, development, utilization and disposal of water, to stabilize the ranching or farming industry; preserve natural resources, protect the tax base, control floods, preserve wildlife, protect the public lands and protect and promote the health, safety and general welfare of the people of the State.[1] Conservation districts are the only local government charged, specifically by state statute, with natural resource management. Each conservation district is governed by a board of five locally elected supervisors who serve without pay. District supervisors serve as the grass roots representatives of private landowners and the

[1] Wyoming Statutes § 11- 16-102(a) (i), 11- 16-102(a) (v), 11-16-103(b), 11-16-113(c)

general public, providing leadership and direction in natural resource conservation programs. As this Draft RMPA/EIS and ACEC proposal will have impacts on the conservation of our natural resources and the stability of the district and residents, we believe it is important you continue to inform us of proposed actions and decisions.

The Long Range Land Use and Natural Resource Management Plan for SER CD 2022-2026 (SER CD NRM Plan)[2] includes an extensive list of policy statements which are the basis for our comments and stance for working as a Cooperating Agency on this project. The SER CD NRM Plan was developed, open for public comment, adopted by the SER CD Board of Supervisors, and filed with the Carbon County Clerk. Please accept the following comments on the Draft RMPA/EIS and ACECs.

Most of the threats to GRSG result from concerns with natural resource management so the SER CD is a key local government stakeholder to insure habitat conservation now and in the future. SER CD has been engaged with the State of Wyoming on GRSG conservation and strategies for nearly two decades. Successful GRSG conservation in Wyoming has centered around previous and current Governor Executive Orders (EO) for Greater Sage-Grouse (GRSG) Core Area Protection (Wyoming Core Area Strategy) with the current one being EO 2019-3 with the 2023 updated core area map. The SER CD includes approximately 2.7 million acres with 37% privately owned and 57% federally managed. With approximately one hundred and fifty (150) GRSG leks and 50% of the SER CD designated as sage-grouse core area under the 2019 EO, the land use decisions and subsequent implementation of said plans can have tremendous impacts on our landowners and the economic stability of the district and its residents.

We understand that the RMPA would change seventy-seven (77) BLM land use plans, collectively referred to as resource management plans (RMPs), across ten (10) Western States, including all ten BLM RMPs in Wyoming and the local Rawlins Field Office plan used for BLM-managed lands within our District.

General COMMENTS

1. The National Environmental Policy Act (NEPA) and Federal Land and Policy Management Act (FLPMA) require coordination between federal agencies and local governments in order to achieve management and regulatory consistency between the Proposal and the SER CD NRM Plan whenever possible. The NEPA commands the federal agency to *"discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the [environmental impact] statement should describe the extent to which the [federal] agency would reconcile its proposed action with the [local government] plan or law."* (40 C.F.R. §§ 1506.2, 1506.2(d)). Policies in the SER CD NRM Plan outline the District's expectations for our federal agency partners during a NEPA process. We look forward to hearing from the BLM to discuss inconsistencies with our approved plan .

   The SER CD policies supporting this comment include: 1) Policy Expectations #3, "*Federal agencies shall conduct a consistency review with the Saratoga-Encampment-Rawlins Conservation District Long Range Land Use and Natural Resource Management Plan for every proposed National Environmental Policy Act decision an agency makes that may affect the District, the natural resources within the district, or its residents."; 2)* Policy Expectations #15, "*Federal agencies shall notify the Saratoga-Encampment-Rawlins Conservation District and conduct a consistency review with its Natural Resource Management Plan for any proposed National Environmental Policy Act decision agencies make that may affect the district, the natural resources within the district, or its citizens as appropriate, pursuant to the Federal Land Policy Management Act and the National Environmental Policy Act."; and 3)* Policy Land Use & Realty #17: *"The Bureau of Land Management should coordinate with the Saratoga-Encampment-Rawlins Conservation District (SER CD) early and*

[2] https://sercd.org/on-going-land-use-planning-information/

allow the SER CD to participate as a cooperating agency whenever there is an Area of Critical Environmental Concern proposal on land managed by the Bureau of Land Management."

2. The custom and culture of the District was developed through the tenacity of the early emigrants and settlers who developed the area. Utilizing the natural resources available, the pioneers developed stable local economies for the residents and communities. Early ranching operations were a major contributor to the economic viability of each community. Residents pride themselves in maintaining a lifestyle rooted in stewardship of the land and its resources.

   Today expansion in energy development including oil, natural gas, and wind is becoming a larger driving force in the economy and includes the possibility for growth in the current population of the area. Local land users are dependent upon the federal lands to varying degrees for commodity use and recreational enjoyment. Local economies derive a significant source of income from these public lands - from industry to agriculture to recreation. Maintaining these traditional historical land uses contributes to the economic viability of the area and is crucial to sustaining the District communities.

   The SER CD policies supporting this comment include: 1) Policy Expectations #19: *"Federal agencies should maintain the Saratoga-Encampment-Rawlins Conservation District's culture of open access, multiple use, agriculture, and rural communities."; 2)* Policy Socio-economics #1: *"Federal agencies shall base all management decisions on the public land multiple use mandate of our public lands and implement actions that balance multiple uses for sustainable land health."; 3)* Policy Socio-economics #19: *"Federal agencies should promote multiple uses that will increase the economic diversity of Carbon County and promote efforts to efficiently analyze and approve the permitting process for those uses."; and 4)* Policy Land Use & Realty #12*: "Historic uses are maintained on lands already designated as Wilderness, Wilderness Study Areas, Areas of Critical Environmental Concern, other special designation areas, or areas inventoried as lands with wilderness characteristics."*

3. The SER CD asserts that the Wyoming Governor's Executive Order 2019-3 on Greater Sage-Grouse (GRSG) Core Area Protection (Wyoming Core Area Strategy) should be the standard for all GRSG management in Wyoming when considering decisions to conserve GRSG and their habitats. We support the development of a RMPA for Wyoming that is developed through coordination with the state's applicable agencies, cooperating agencies, and public input to strengthen and coordinate BLM plan alignment with the Wyoming Core Area Strategy and conservation plan.

   The SER CD implores the BLM incorporate the de minimis activities from the Wyoming Core Area Strategy, Appendix G into the preferred alternative and ultimately the Wyoming Record of Decision.

   The SER CD policies supporting this comment include: 1) Policy Wildlife & Fisheries #24: *"Federal agencies should recognize the Wyoming Governor's Executive Order 2019-3 on Greater Sage-Grouse (GRSG) Core Area Protection in conserving sage-grouse and their habitats and use it as the standard for GRSG management in Wyoming."; 2)* Policy Wildlife & Fisheries #34: *"All mapped Greater Sage-Grouse priority habitat management areas and general habitat management areas should match state plans."; and 3) Policy Wildlife & Fisheries #33: "Coordination with the Saratoga-Encampment-Rawlins Conservation District should occur whenever there are proposed adjustments to core sage-grouse habitat boundaries or policies affecting said habitat."*

4. The SER CD encourages the BLM to reconsider the scale for the Draft RMPA/EIS planning and analysis project. Using a large project area for analysis skews the analysis and subsequent effects shown in the analysis to the point where the decision made from the analysis contains flaws and may result in an

inappropriate outcome. We believe the planning process should not be done on a scale larger than a statewide one so that the analysis and subsequent effect result in appropriate management. It should be a Wyoming developed plan, not just a Wyoming decision from a rangewide plan.

COMMENTS – Area of Critical Environmental Concern (ACECs) Designation

5. The District is opposed to the federal designation of any Wyoming ACEC in the RMPA. The Wyoming Core Area Strategy provides a sustainable strategy for balancing multiple use opportunities in Wyoming while providing the foundation for GRSG conservation.

   The SER CD policies supporting this comment include: 1) Policy Land Use & Realty #14: *"Special land use designations are applied only when the management is consistent with surrounding management and contributes to the sound policies of multiple use, economic viability and county custom and culture."; 2)* Policy Vegetation – General #10: *"Special land use designations should only be considered when they are consistent with surrounding management and contribute to the sound policy of multiple use, economic viability, and community stability."; 3)* Policy Land Use & Realty #18: *"Proposals for Areas of Critical Environmental Concern designations shall strictly adhere to the relevance and importance criteria, and the Bureau of Land Management must demonstrate, using credible data, the need for an Area of Critical Environmental Concern designation to protect the area in question and prevent irreparable damage to resources, natural systems, or the economy of the local area."; and 4)* Policy Land Use & Realty #19: *"Any Area of Critical Environmental Concern designation should address the reason for designation and not extend beyond the reason for designation."*

6. The environmental consequences listed for GRSG from Alternative 3 in 4.2.4 do not adequately describe impacts from total removal of grazing from ACECs. The increased risk of fire, increased arthropod food source for chicks, and other potential beneficial results from grazing as listed in comments 13 and 14 need to be in the section's narrative.

   The SER CD policies supporting this comment include: 1) Policy Range #13: "*Federal lands within Carbon County are managed for multiple-use and sustained yields, which includes continued grazing as intended by Congress in the passage of the Taylor Grazing Act, Federal Land Policy and Management Act, Multiple Use-Sustained Yield Act, and the National Forest Management Act."; 2)* Policy Land Use & Realty #14: *"Special land use designations are applied only when the management is consistent with surrounding management and contributes to the sound policies of multiple use, economic viability and county custom and culture."; 3)* Policy Vegetation – General #10: *"Special land use designations should only be considered when they are consistent with surrounding management and contribute to the sound policy of multiple use, economic viability, and community stability."; 4)* Policy Socio-economics #1: *"Federal agencies shall base all management decisions on the public land multiple use mandate of our public lands and implement actions that balance multiple uses for sustainable land health."; and 5)* Policy Socio-economics #19: *"Federal agencies should promote multiple uses that will increase the economic diversity of Carbon County and promote efforts to efficiently analyze and approve the permitting process for those uses."*

7. The SER CD does not believe that ACEC designation is necessary in Wyoming to manage habitat for the conservation of GRSG. We believe the Wyoming Core Area Strategy, avoidance, minimization and compensatory mitigation, and sagebrush vegetation treatment protocols developed and implemented in addition to numerous other decisions with restrictions on management of public lands has worked to

minimize impacts to GRSG habitat. Further "protections" are unnecessary and would have detrimental impacts to the economy of our communities.

The SER CD policies supporting this comment include: 1) Policy Socio-economics #1: *"Federal agencies shall base all management decisions on the public land multiple use mandate of our public lands and implement actions that balance multiple uses for sustainable land health."; and 2)* Policy Socio-economics #19: *"Federal agencies should promote multiple uses that will increase the economic diversity of Carbon County and promote efforts to efficiently analyze and approve the permitting process for those uses."*

COMMENTS – Draft Environmental Impact Statement

8. The SER CD does not support Alternative 1. We do not support the designation of Sagebrush Focal Areas (SFA) with a recommendation to withdraw them from mineral location and entry under the Mining Law of 1872 and prioritization for various other activities related to vegetation treatments, livestock grazing, and wild horses and burros. This alternative does not align with current Wyoming management for GRSG conservation and the Wyoming Core Area Strategy.

   Support for this statement comes from previously listed policies and the SER CD Wildlife & Fisheries Policy #35: *"The use of sagebrush focal areas for Greater Sage-Grouse habitat classification is not supported by the Saratoga-Encampment-Rawlins Conservation District."*

9. The SER CD has a moderate level of support for Alternative 2, the No Action Alternative. We participated as a cooperating agency in this planning effort. We prefer the approach of the state planning effort to the rangewide planning effort RMPA/EIS with individual state decisions and what is currently in the Wyoming RMPs. With a few updates based on the new EO, core area map, new studies, and additional information on minimizing threats from predation, Alternative 2 is still a solid management plan for Wyoming.

10. The SER CD is adamantly opposed to Alternative 3. This alternative is very restrictive and for all practical purposes does away with all multiple uses except for wildlife. All identified habitat management areas would be managed as Priority Habitat Management Areas (PHMA) which is unacceptable. Managing all General Habitat Management Areas (GHMA) with the same restrictions as PHMA is ludicrous. Additionally, all PHMA would then be managed as unavailable for livestock grazing, PHMA would be closed to new fluid mineral leasing, saleable minerals/mineral materials permits and nonenergy leasable minerals leasing (development associated with existing permits and leases would not be precluded), PHMA would be recommended for withdrawal from location and entry under the Mining Law of 1872, and PHMA would also be right-of-way (ROW) exclusion areas. Additionally, we understand this alternative would designate 11,139,472 acres of ACECs specific to the management of GRSG; the ACECs would include portions of PHMA and would have the same allowable uses (or restrictions) as the rest of PHMA.

    Alternative 3 would have decimating impacts to state and local economies, jobs, and the custom and culture of our rural communities. Far-reaching impacts to private lands, especially in areas of significant intermixed land ownerships. This alternative would cause harm to private landowners and nearly every person in Wyoming would have direct or indirect impacts as a result. See the previous section, "COMMENTS – Area of Critical Environmental Concern (ACECs) Designation", for more specifics on ACECs and associated policy statements.

    The SER CD policies supporting this comment include: 1) Policy Land Use & Realty #3: "*Federal agencies consider the direct and indirect effects on private and state lands on a local region wide basis rather than only analyzing the impacts on federal lands."; 2)* Policy Land Use & Realty #4:

"*Federal agency decisions on federal public lands minimally impact neighboring state and private lands with impacts considered during any National Environmental Policy Act analysis."; and 3)* Policy Land Use & Realty #5: "*Federal land use projects in mixed land ownership areas are coordinated and rely heavily on input from neighboring private landowners."*

11. The SER CD does not support Alternative 4. We do not support the provision that all PHMA would have No Surface Occupancy (NSO) stipulations applied for new oil and gas leases. We also do not support that areas previously identified as Sagebrush Focal Areas (SFAs) are managed as PHMA. The Draft RMPA/EIS is not clearly written as to whether this alternative will also provide a recommendation for withdrawal from mineral entry.

    The District supports appropriate adaptive management when habitat thresholds have been met. We do not support the BLM implementing adaptive management actions when "population" thresholds have been met. The BLM does not manage the GRSG (see comment #16), therefore BLM should not be making management changes based on species population trends. We recommend deferring any population threshold entirely to the state wildlife management agency with no identified metric used to monitor habitat concerns through population trends. The reference and use of "population status" should be removed from the entire RMPA/EIS and associated analysis.

12. Alternative 5, the preferred alternative is also preferred by the SER CD with changes addressed as identified in these comments. It works to balance public land uses with GRSG conservation, GRSG management area boundaries were updated to align with the Wyoming Core Area Strategy 2023 mapping effort, it incorporates additional flexibilities, and provides for compensatory mitigation. The "no net loss" standard for mitigation is tolerable.

    We have on-going individual concerns with this alternative as it is written, e.g., consistently representing restrictions, representing livestock grazing as a management tool for beneficial outcomes to the habitat, economic impacts to local communities, and the use of GRSG population trends as management triggers to make management changes. Management changes should always be made with localized changes made to decisions that implement the RMPs addressed at the local level and not be done via RMP-level changes.

    The SER CD reminds the BLM that the Wyoming Game and Fish Department is the primary agency responsible for managing all wildlife species in Wyoming not listed as threatened or endangered per the Endangered Species Act. The BLM should focus on habitat management for GRSG and only consult with and defer to the Wyoming Game and Fish Department for wildlife management. The use of population trends as management triggers is not appropriate and this approach for making management changes should be removed from the RMPA/EIS before it is finalized.

    The SER CD policies supporting this comment include: 1) Policy Wildlife & Fisheries #27: "*The Wyoming Game and Fish Department is the primary agency responsible for managing all wildlife species in Wyoming not listed as threatened or endangered per the Endangered Species Act."; and* Policy Wildlife & Fisheries #28: "*The United States Forest Service and Bureau of Land Management should focus on habitat management for species of importance identified by the state and only consult with and defer to the Wyoming Game and Fish Department for wildlife management."*

13. The SER CD does not support Alternative 6. We do not support the addition of any ACECs in this RMPA/EIS. There are very few details regarding what restrictions would be placed on the ACECs. Vague statements such as on page 43, "ACEC boundaries would be the same as described for Alternative 3, but management would be less restrictive compared to Alternative 3, though generally more restrictive than the rest of

Alternative 6 PHMA." do not provide the appropriate level of detail for analysis. The level of detail for each ACEC as required under 43 CFR § 1610.7-2(b) is not presented nor fully analyzed in the Draft RMPA/EIS. More detailed information is needed in the final RMPA/EIS.

See the previous section, "COMMENTS – Area of Critical Environmental Concern (ACECs) Designation", for more specifics on ACECs and associated policy statements.

14. The SER CD is strongly opposed to any alternative, decision, or management action in the Draft RMPA/EIS that diminishes BLM's multiple-use and sustainable yield mandate. It is very important for the final RMPA/EIS to allow flexibility at the local level to address the ever-changing local habitat conditions. Ultimately, the Record of Decisions (RODs) will be done on a state-by-state basis with Wyoming interests and concerns taken into consideration for what "fits" and is consistent with the Wyoming Core Area Strategy and allow for flexibility.

    The SER CD policies supporting this comment include: 1) Policy Expectations #19: *"Federal agencies should maintain the Saratoga-Encampment-Rawlins Conservation District's culture of open access, multiple use, agriculture, and rural communities."; 2)* Policy Socio-economics #1: *"Federal agencies shall base all management decisions on the public land multiple use mandate of our public lands and implement actions that balance multiple uses for sustainable land health."; and 3)* Policy Socio-economics #19: *"Federal agencies should promote multiple uses that will increase the economic diversity of Carbon County and promote efforts to efficiently analyze and approve the permitting process for those uses."*

15. The SER CD applauds the BLM for acknowledging that predators may have negative impacts on GRSG and appreciates the addition of Table 2-11 Comparison Alternatives, Minimizing Threats from Predation. We affirm that the Wyoming Game and Fish Department is the primary agency responsible for managing all wildlife species in Wyoming not listed as threatened or endangered per the Endangered Species Act. As a result, we are appreciative of the Draft RMAP/EIS focusing on the habitat and collaborating with appropriate state agencies, other landowners, federal predator management agencies, and tribal governments in their efforts to minimize impacts from predators on GRSG where needed. We support applying minimization measures and best management practices to new authorizations and activities in Priority Habitat Management Areas and General Habitat Management Areas to minimize threats from predators shown to pose a threat to GRSG, consistent with applicable law.

    The SER CD policies supporting this comment include: 1) Policy Wildlife & Fisheries #47: "*Federal land managers should follow Wyoming Game and Fish Department and Wyoming State Animal Damage Management Board predator policies."; and 2)* Policy Wildlife & Fisheries #48: "*Federal agencies should acknowledge the potential impacts predators can have on wildlife and livestock and should cooperate with predator boards and wildlife services for expertise and predator management."*

16. Once again, the Wyoming Game and Fish Department (WGFD) is the primary agency responsible for managing all wildlife species in Wyoming not listed as threatened or endangered per the Endangered Species Act, accurate framing of what is being considered needs to be consistently stated throughout the document. The WGFD manages the GRSG species, and the BLM manages the habitat on BLM-managed lands. In every instance throughout the document, it should be stated as impacts to **GRSG habitat,** not impacts to **GRSG**. ALL instances of the inaccurate outcome statement need corrected. Statements made related to the habitat outcomes of the management actions as "provide conservation to GRSG" are also acceptable. One of many instances of inaccurate framing comes from page ES-6. The statement "The

greatest protection for **GRSG habitat** is under Alternative 3…" accurately frames the intended outcome of this planning effort. In contrast, in the paragraph immediately following the correctly stated example it states "…would refine management for **GRSG** and associated habitats and improve cross-boundary coordination of shared populations compared with Alternatives 1 and 2, thus potentially improving **management of GRSG** across its range." Again, **ALL** instances of the inaccurate outcome statement need corrected.

The SER CD policies supporting this comment include: 1) Policy Wildlife & Fisheries #27: "*The Wyoming Game and Fish Department is the primary agency responsible for managing all wildlife species in Wyoming not listed as threatened or endangered per the Endangered Species Act."; and* Policy Wildlife & Fisheries #28: "*The United States Forest Service and Bureau of Land Management should focus on habitat management for species of importance identified by the state and only consult with and defer to the Wyoming Game and Fish Department for wildlife management."*

17. We have vast amounts of mixed land ownership areas in Wyoming that increase the potential for impacts to neighboring private lands. The BLM RMPA has the potential to negatively impact the current use of neighboring lands. The SER CD supports private property rights and will not support any proposed decision or alternative that will negatively impact the current use of neighboring lands.

    The SER CD policies supporting this comment include: 1) Policy Land Use & Realty #3: "*Federal agencies consider the direct and indirect effects on private and state lands on a local region wide basis rather than only analyzing the impacts on federal lands."; 2)* Policy Land Use & Realty #4: "*Federal agency decisions on federal public lands minimally impact neighboring state and private lands with impacts considered during any National Environmental Policy Act analysis."; and 3)* Policy Land Use & Realty #5: "*Federal land use projects in mixed land ownership areas are coordinated and rely heavily on input from neighboring private landowners."*

18. The terms "neighborhood cluster" and "neighborhood cluster scale" were not used in the 2015 or 2019 BLM GRSG planning efforts. The new terms create confusion as they are described differently in relation to Habitat Assessment Framework (HAF) fine scale depending on who is talking or what narrative section is being read. The SER CD recommends having clear definitions added to the Glossary Terms since these are relatively new terms. The SER CD also suggests that a map be included to visualize the comparison of scale between neighborhood cluster scale, HAF mid scale, and HAF fine scale for an area in Wyoming.

19. The SER CD supports the management approach that compensatory mitigation should be durable, ensuring it will be resilient and persist as GRSG habitat (barring any natural disaster), and should be completed prior to associated actions occurring. We strongly agree that compensatory mitigation should also be prioritized to occur within the same HAF fine scale area of the impact so that it provides habitat for GRSG populations affected by the project. We do not support broadening the compensatory mitigation area to the neighborhood cluster scale or nearest equivalent Habitat Management Area (HMA) designated habitat or HAF mid-scale area where practicable. The durable, HAF fine scale approach should be consistent in all alternatives that provide for compensatory mitigation and should not be changed to a broader scale approach.

    The SER CD policies supporting this comment include: 1) Policy Agriculture #6: "*Federal agencies should work with local agricultural producers, Conservation Districts, and Counties to ensure mitigation is done properly and locally."; 2)* Policy Mineral & Energy #19: *"Federal agencies should support mitigation plans for mining projects that will minimize habitat loss and fragmentation or degradation of habitat values. The amount and location of mitigation should correspond to the*

quantity and quality of the habitat at risk and should be conducted locally. Federal agencies should work with local agricultural producers, Conservation Districts, and Carbon County to ensure mitigation is done properly."; and 3) Policy Mineral & Energy #26: *"Federal agencies should conduct a minimum of twelve months of post-construction monitoring to assess displacement of wildlife and the effectiveness of mitigation measures. Monitoring should cover all seasons of operation and should follow credible data criteria."*

20. The SER CD urges the BLM to provide consistency and complete transparency in the Draft RMPA/EIS. It is imperative that each alternative is fully disclosed as to its impacts. There are many places in the document where one or more alternative impacts are not disclosed in the discussion. One example of this is found in Section 4.21.6 in the contribution of alternatives narrative on pages 550-551. There is a paragraph for each alternative 1, 2, and 3 with alternatives 4 and 5 combined in one paragraph. Alternative 6 is not mentioned. This happens frequently and it is not always alternative 6 descriptions that are missing in the narrative.

21. The Coates et al. 2016 paper titled "*Landscape characteristics and livestock presence influence common ravens: relevance to greater sage-grouse conservation.*" states, "***Grazing by livestock in sagebrush ecosystems is common practice on most public lands, but associations between livestock and ravens are poorly understood.***" This is the only study, conducted in a limited area, that surveyed and then modeled correlation between livestock presence and raven presence. Other factors associated with agriculture operations and factors not associated with livestock and/or agriculture operations were not isolated and may also have positive influences on GRSG. This one study in a limited area is not enough evidence to justifiably state on page 243, "*Anthropogenic factors that contribute to greater raven occurrence include livestock presence…*" More studies across the GRSG range need to be conducted before making a definitive statement about greater raven occurrence simply from livestock presence.

    The SER CD strongly recommends changing the narrative in Section 3.2.2 on page 243 to read "Anthropogenic factors that contribute to greater raven occurrence include increased road density, presence of transmission lines, fragmented habitats, any anthropogenic feature that provides a tall perching area, and presence of roadside rest areas (O'Neil et al. 2018; Coates et al. 2016)."

    We strongly recommend also changing the narrative on migratory birds in Section 3.5.4 on page 253, second paragraph, third sentence from "*Raven densities are higher in areas associated with livestock production (Coates et al. 2016) and will readily use…*" to "One study suggests that raven densities may be higher in areas associated with livestock production, but associations between livestock and ravens are poorly understood and more research is needed (Coates et al. 2016). Ravens will readily use…"

    The SER CD policies supporting this comment include: 1) Policy Wildlife & Fisheries #47: "*Federal land managers should follow Wyoming Game and Fish Department and Wyoming State Animal Damage Management Board predator policies."; and 2)* Policy Wildlife & Fisheries #48: "*Federal agencies should acknowledge the potential impacts predators can have on wildlife and livestock and should cooperate with predator boards and wildlife services for expertise and predator management."*

22. Proper livestock grazing and ranching operations are shown to have beneficial impacts on GRSG conservation, both scientifically and anecdotally (Monroe et al. 2017, Goosey et al. 2019). The SER CD supports livestock and proper grazing as a tool for the sound management of private, state, and federal lands. Some examples of beneficial impacts that need to be included and/or expanded in Chapter 4, Environmental Consequences include: grazing of fine fuels reduces the risk of wildfires, sustainable ranches that are not subdivided and developed maintain unfragmented habitats, livestock grazing promotes

increased arthropod availability for food, and how water developed for livestock can be beneficial through proper design. The following paragraph is one example of an additional narrative representing a beneficial impact and should be included with other narratives developed for the final EIS.

The SER CD recommends adding this narrative to Section 4.2.1 Nature and Types of Effects, Livestock Grazing Management narrative regarding the effects of livestock grazing on the insect population, major "food" source for greater sage-grouse chicks. "*Periodic deferment or rest are commonly prescribed to achieve desired conservation outcomes on rangelands and our findings suggest several arthropod taxa comprising important food resources for shrubland and grassland birds may benefit from this practice. In this grazing-adapted ecosystem, however, long-term absence of grazing or other disturbance dramatically altered the structure of the vegetative and arthropod communities, ultimately resulting in reduced availability of the arthropod taxa most important to shrubland and grassland avifauna. (Goosey et al. 2019)*" We strongly recommend the use and reference to this research paper, Attachment A in this section and other sections as applicable throughout the document.

The SER CD policies supporting this comment include: 1) Policy Range #7: "*Proper and appropriate livestock grazing practices should be used as a tool for the sound management of private, state, and federal lands."; and 2) Policy Range #8: "The Secretaries of Agriculture and Interior should develop fire management policies that utilize and acknowledge the beneficial effects of planned grazing as a fire management tool."*

23. The Wyoming Big Horn Basin Sage Grouse Predation Project (SGPP) began in 2011 and continued until only one radio marked bird remained in 2020. The project was brought to fruition through action by seven northwest Wyoming Conservation Districts and investigated aspects of predation affecting sage-grouse in the Big Horn Basin. The Meeteetse Conservation District facilitated the SGPP through field investigations and research that was under the joint auspices of the USDA-Wildlife Services field personnel in the Bighorn Basin and its National Wildlife Research Center in Logan, Utah. Broad support and funding from a wide array of stakeholder groups including predator management districts, individual ranches, oil and gas industry, grazing interests, and the Wyoming Game & Fish Department.

    The SER CD recommends adding Attachment B, the research paper "Assessing and Reducing Common Raven Impacts on Greater Sage-grouse Nesting Ecology" prepared by HWA Wildlife Consulting, to Chapter 6-Literature Cited. Additional results and information from the study are included in Attachment C. Information in Attachments B and C should be included throughout the document but specifically in Section 4.2.1 Nature and Types of Effects, Predator Management narrative.

24. The SER CD encourages the BLM to not incorporate any changes to the authorization process relating to range improvements as a result of the RMPA/EIS. In addition, there should not be anything in the RMPA/EIS that would allow for the removal of any existing or future range improvement as a result of this GRSG planning effort. There should be no effects to any present, operational, or proposed range improvement. Range improvements such as water developments benefit wildlife in addition to livestock. (43 C.F.R. Part 4100)

25. The SER CD is adamant that grazing leases/permits on BLM should not have Animal Unit Months (AUMs) decreased as a result of the RMPA/EIS. Reductions in AUMs would be detrimental to our citizens, communities, and ultimately the health of the land.

26. In Section 4.3.1, Nature and Type of Effects, Livestock Grazing Management, there are two instances where "cool season" grass is referred to as "cold season" grass. This needs to be changed for accuracy in accordance with range profession standard terminology.

CONCLUSION

Thank you for the opportunity to comment on the Draft Resource Management Plan Amendment, Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning, and potential Areas of Critical Environmental Concern. We look forward to our continued participation as a cooperating agency on additional National Environmental Policy Act processes for greater sage-grouse conservation.

Respectively,

Arla Strasser

Arla Strasser
Board Chair

AS/lc

CC: Wyoming's Congressional Delegation
Governor Mark Gordon
National Association of Conservation Districts
Wyoming Association of Conservation Districts
Wyoming County Commissioners Association
Wyoming Department of Agriculture
Wyoming Farm Bureau Federation
Wyoming Stock Growers Association
Wyoming Wool Growers Association

Enclosures: Attachment A
Attachment B
Attachment C

Western Exploration
A Legacy of Gold Discovery

June 13, 2024

Patricia Deibert, National Sage-grouse Coordinator
Bureau of Land Management
440 W 200 S Suite 500,
Salt Lake City, Utah 84101

Submitted Electronically to: BLM ePlanning, https://eplanning.blm.gov/

Re: Bureau of Land Management Draft Environmental Impact Statement and Resource Management Plan Regarding Greater Sage-Grouse Conservation[1]

Dear Ms. Deibert:

Western Exploration LLC ("WEX") appreciates the opportunity to submit these comments regarding the above-referenced BLM Draft Environmental Impact Statement ("DEIS") and Greater Sage Grouse ("GRSG") Resource Management Plan ("RMPA").

WEX has submitted information and engaged throughout BLM's various GRSG plan amendment processes, including the land use plan amendments ("LUPAs") finalized in 2015 at 80 Fed. Reg. 57,633 (Sept. 24, 2015); the cancelled Sagebrush Focal Area Mineral Withdrawal at 82 Fed. Reg. 47,248 (Oct. 11, 2017); the RMPA process finalized in 2019 at 84 Fed. Reg. 10,323 (March 20, 2019); and BLM's 2020 preparation of a supplemental environmental impact statement ("SEIS") reassessing the 2015 and 2019 plans. WEX has also engaged in litigation regarding BLM's 2015 LUPAs to protect its interests in the Doby George, Wood Gulch, and Gravel Creek Projects.[2] In response to a court order in that litigation, BLM prepared a supplemental EIS ("SEIS") to address significant issues WEX raised regarding BLM's proposed designation of sagebrush focal areas ("SFAs") for withdrawal.[3] The information provided during those processes is hereby incorporated by reference.

I. WEX's interests in Elko County lie largely on Forest Service land; however, WEX has claims on a parcel of BLM land that is under Forest Service management.

WEX is a privately held company that acquired the Doby George and Wood Gulch projects located in northern Elko County, Nevada in 1997. Since 1998, WEX has spent more than $53

[1] BLM Docket No. 223.LLHQ230000.L11700000.PI0000.LXSGCO000000.

[2] *See W. Expl., LLC v. U.S. Dep't of the Interior*, 250 F. Supp. 3d 718 (D. Nev. 2017).

[3] BLM issued a notice canceling its withdrawal proposal on October 11, 2017. *See* 82 Fed. Reg. 47,248.

121 WOODLAND AVENUE, SUITE 140 RENO, NV 89523
TELEPHONE: 775-329-8119 FAX: 775-329-8311

million on exploration efforts in the Doby George and Wood Gulch Project areas. WEX's exploration budget at Doby George and Wood Gulch for field seasons since 2020 have totaled more than $11 million. WEX also has interests in exploration projects near the Doby George and Wood Gulch projects, including the Gravel Creek Discovery Zone. Doby George, Wood Gulch and Gravel Creek together make up the Aura project. Since 2020 the company has advanced the Aura project significantly; a technical report completed November 2021 is available here: https://s26.q4cdn.com/523006245/files/doc_downloads/Aura_2021_Technical_Report_Western_Exploration.pdf. The work completed by WEX since 2020 includes almost 30,000 feet of drilling, surface mapping, sampling, and geophysics and metallurgical test work that demonstrates a clear path for recovery of gold and silver from the mineral resources at Doby George, Wood Gulch and Gravel Creek. The company has employed a staff of up to 6 geologists and 5 administrative personnel to complete the work.

Importantly, the US Geological Survey's ("USGS's") Mineral Potential report gives these WEX Projects its highest rating for mineral potential.[4] In previous processes, conducted under the National Environmental Policy Act ("NEPA") and addressing GRSG habitat, BLM has acknowledged noted that two "large, well-defined gold resources have been developed through exploration in the past 20 years in Elko County, Nevada"—referring to the two WEX Projects.[5] Our analysis shows that the Doby George resource grade falls within the top quartile of northern Nevada open pit oxide developments. USGS has commented on the value of the Gravel Creek deposit, adding a large gold/silver mine "to the estimated future mineral development" in the DEIS on mineral withdrawal—that mine was Gravel Creek.[6] And BLM has previously noted that the local economy in Elko is primarily dependent on extensive locatable mineral operations and that the potential future mines in the proposed withdrawal areas could extend the longevity of the existing mining sector in the county and thereby provide ongoing employment as some of the current mines in the county reach the end of their operations.[7]

Although we have found it difficult to properly review BLM's habitat designation maps because of their large scale, we believe that all of WEX's projects in Elko County are situated in areas that, under various alternatives considered in the DEIS/RMPA, would be designated Priority Habitat Management Area ("PHMA"), SFA, General Habitat Management Area ("GHMA"), and/or Other Habitat Management Area ("OHMA").

- The Doby George Project is an advanced mineral exploration project that covers approximately 2,392 acres (114 claims) in the northern Independence Range on US Forest Service ("USFS") land in the Aura Mining District. It is largely located in PHMA.

[4] USGS, October 2016 Mineral Potential Report and Sagebrush Mineral Resource Assessment for BLM *see* https://pubs.usgs.gov/sir/2016/5089/b/sir20165089b.pdf.

[5] BLM, Proposed Sagebrush Focal Area Withdrawal Environmental Impact Statement, at B-28 (Apr. 2016).

[6] *Id.*

[7] *See id.* at C-28–29 (tables noting economic value of industries, including mining, in Elko County and employment data for the county).

- WEX has claims on a 40-acre parcel of BLM land within the Doby George Project that is managed by USFS under a memorandum of understanding (MOU) with BLM. We believe that this parcel is largely located in PHMA.
- Between Doby George and Wood Gulch, the Aura Project is a mineral exploration project that covers approximately 5,015 acres (239 claims) in the northern Independence Range on USFS land in the Aura Mining District. It is largely located in PHMA and, for Alternative 1, SFA.
- The Wood Gulch Project, which includes the Gravel Creek Discovery Zone, is an advanced mineral exploration project that covers approximately 7,470 acres (356 claims) in the northern Independence Range on USFS land near the old Wood Gulch Mine. It is largely located in PHMA and, for Alternative 1, SFA.

II. WEX relies on BLM's statement that the decision area for the DEIS/RMPA does not include any USFS land or underlying mineral estate.

The DEIS/RMPA states that, in the RMPA, "[n]o decisions are being are being made on National Forest System lands and therefore the decision area for this RMPA does not include either the National Forest System surface lands or the federal mineral estate underlying National Forest System lands."[8] We understand BLM to mean that *no alternative considered in the DEIS/RMPA affects management of USFS land or underlying federal mineral estate*. This includes the proposed mineral withdrawal recommendation in Alternative 3. It also includes the mineral withdrawal recommendation in Alternative 1. Thus, if BLM selects Alternative 1, which would re-adopt the 2015 LUPAs, that decision would not have any effect on USFS land—even though the 2015 LUPAs recommended withdrawals on USFS land. We ask BLM to clarify this issue in the FEIS/RMPA.

We note that BLM's updated habitat maps, released in May 2024, do not bear the same caveat that the maps in Appendix 1 to the DEIS/RMPA include: the May 2024 maps do not state that the mapping does not apply to USFS land. Our understanding is that this omission does not change the conclusion that the DEIS/RMPA does not apply on USFS land and that the FEIS/RMPA will not apply on USFS land. Again, we ask BLM to clarify this issue in the FEIS/RMPA.

III. Whichever alternative BLM adopts, the Secretary of the Interior cannot lawfully go forward with the currently proposed mineral withdrawal as it pertains to USFS lands.

As described above, BLM proposed mineral withdrawal in its 2015 LUPAs, and the Secretary of the Interior initiated the withdrawal process soon after. The Secretary canceled the withdrawal in 2017, relying on data showing that the withdrawal would cause devastating socioeconomic impacts disproportionate with the fact that mining affected less than 0.1% of

[8] DEIS at 1-5.

greater sage grouse occupied range.[9] However, in 2021, the Secretary re-initiated the withdrawal in accord with BLM's view that, because the United States District Court for the District of Idaho preliminarily enjoined the 2019 RMPAs, the 2015 LUPAs are in effect[10] and also as a result of the Court's order ruling that the unilateral cancellation of the mineral withdrawal prior to completing the NEPA process was unlawful. As we discuss below, we believe that BLM's conclusion that its 2021 ROD is not enforceable is in error and that BLM's 2021 ROD is the legally effective decision in place and BLM must enforce the 2019 GRSG RMPAs, which do not recommend a mineral withdrawal.

Even if BLM is justified in enforcing the 2015 LUPAs, the Secretary of the Interior cannot continue with the withdrawal as proposed. The Secretary states in the notice of proposed withdrawal that "[t]he lands included in the proposed action are National System of Public Lands and National Forest System lands administered by the BLM and the United States Forest Service (USFS)."[11] But BLM's decision to adopt *any* alternative in the DEIS/RMPA will supersede the 2015 LUPAs. And BLM makes clear that any decisions made in the 2024 RMPA process will not apply on USFS land. Thus, if BLM adopts any alternative in the DEIS/RMPA—including Alternatives 1 or 3, the only alternatives that contemplate a mineral withdrawal—BLM's most current GRSG land use plan would no longer recommend withdrawal of USFS lands from mineral location. The Secretary should not propose a mineral withdrawal for land that BLM no longer recommends for withdrawal.[12] BLM's discussions in the RMPA appear to be unlawful, misguided, and predecisional.

IV. BLM must analyze the effects of the mineral withdrawal proposed in Alternatives 1 and 3, likely, because this analysis presents substantial new information, in a SEIS.

BLM is incorrect when it states that it is not required to analyze the effects of its mineral withdrawal recommendation under Alternatives 1 and 3. BLM explains that such analysis is not required because the withdrawal is a future, speculative action:

> the recommendation for withdrawal does not itself restrict any resource uses. As such, there would be no effects on locatable mineral claims or mine development. If, in the future, the Secretary of the Interior were to propose a withdrawal of the land from location and entry under the Mining Law of 1872, that proposal would be subject to appropriate NEPA and other analysis and if the Secretary were to withdraw the land following such analysis,

[9] BLM, Nevada and Northeastern California Greater Sage-Grouse Final Supplemental Environmental Impact Statement, Greater Sage-Grouse, at 4-42 (Nov. 2020).

[10] *See W. Watersheds Project v. Bernhardt*, 519 F. Supp. 3d 763, 789 (D. Idaho 2021).

[11] 86 Fed. Reg. 44,742, 44,743 (Aug. 13, 2021).

[12] *See* 86 Fed. Reg. at 44,743 (acknowledging that BLM decisions "inform the Secretary's consideration of whether to withdraw any of the lands proposed for withdrawal").

location and entry under the Mining Law of 1872 would no longer be allowable, subject to valid existing rights."[13]

But the withdrawal is not a future action: BLM is currently considering withdrawal. The withdrawal is a reasonably foreseeable result of BLM's recommendation that lands be withdrawn from mineral entry: indeed, as a result of its 2015 LUPAs' withdrawal recommendation, BLM "filed an application requesting the Assistant Secretary of the Interior for Land and Minerals Management to withdraw" nearly 3 million acres in Nevada.[14] That process is the same process that BLM re-initiated in 2021. BLM's decision not to assess impacts of its proposed recommendation of mineral withdrawal is contrary to NEPA, which requires that BLM assess "changes to the human environment from the proposed action or alternatives that are reasonably foreseeable."[15]

Further, refusing to analyze effects of a recommended mineral withdrawal in the EIS analyzing the RMPA that makes such recommendation is contrary to BLM's prior practice. When BLM recommended mineral withdrawal in the 2015 LUPAs, BLM addressed withdrawals in its impacts analysis, stating that the proposed "[w]ithdrawal of areas from locatable mineral entry would prohibit the filing of new mining claims in those areas and reduce availability of locatable mineral resources" and using several impact indicators related to mineral withdrawal to assess the impacts of such withdrawal—that is, not just to compare alternatives but to select the best alternative.[16] "When an agency departs from past practice, it must provide a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored. It must, in short, explain why it has changed its policy."[17] BLM must provide such reasoned explanation.

Additionally, "[a]n agency impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and action thereby fails to address the true scope and impact of activities that should be under consideration."[18] Here, BLM segments the DEIS/RMPA from the withdrawal by pretending that the withdrawal is a future possibility that may not occur. As noted, this analysis is not factual. Indeed, FLPMA itself acknowledges the connection between the Secretary's withdrawals under FLPMA Section 204 and RMPAs developed under FLPMA Section 202: "[w]ithdrawals made pursuant to section 204 of this Act may be used in carrying out management decisions."[19] The paradox, and the anachronism, should be obvious to BLM: BLM is proceeding with a mineral withdrawal at the same time that it

[13] DEIS at ES-7. BLM offers what it describes as a "description of the potential environmental consequences of a Secretarial withdrawal of the analysis area from location and entry under the US mining laws" "strictly for the purposes of comparison between the alternatives." DEIS, Vol. III at 10-12. This is not a sufficient analysis.

[14] 80 Fed. Reg. 57,635, 57,636 (Sept. 24, 2015).

[15] 40 CFR § 1508.1(g).

[16] 2020 FSEIS at 4-305.

[17] *CBS Corp. v. FCC*, 785 F.3d 699, 708 (D.C. Cir. 2015) (citation and internal quotation marks omitted).

[18] *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).

[19] 43 CFR § 2300.0-3(b)(3).

is deciding whether it should recommend that withdrawal. BLM must consider the withdrawal as part of its analysis of the 2024 GRSG RMPAs.

Finally, withdrawal cannot be supported without analyzing and considering the impacts of such withdrawal on existing mineral development, future prospects for mineral development, and resulting impact to the surrounding communities that rely on mineral exploration and development, including WEX's projects, for revenue. Although such analysis will occur upon segregation of the lands, that is too little too late. At that point, lands proposed for withdrawal will be "off limits" for further exploration, meaning that claims of significant potential and claims necessary to a viable project may not be explored for adequate data to support a validity determination. Protection of only "valid existing rights" from such a withdrawal does not adequately protect rights under the General Mining Law. Alternatives 1 and 3 must be reanalyzed and revised to provide for such protection in order to avoid violating NEPA and the General Mining Law.

We believe that any analysis that comports with NEPA would require not just modification of the DEIS/RMPA in the FEIS/RMPA but, instead, a SEIS. BLM is required to prepare a supplemental EIS where there "are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" and the "new information shows that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered."[20] Here, mineral withdrawal would have significant climate impacts, socioeconomic impacts, and, even, impacts to GRSG habitat because—though BLM does not acknowledge this reality in the DEIS/RMPA—mining companies have been key players in restoring GRSG habitat destroyed and degraded by wildfire, the single largest cause of GRSG habitat loss.[21] BLM must assess the effects of the withdrawal in a SEIS.

V. The DEIS/RMPA ignores site-specific data, instead adopting modeled mapping that does not reflect best available science.

NEPA requires that BLM "ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents" and "make use of reliable existing data and resources."[22] Additionally, BLM's Information Quality Guidelines state that "BLM operates on the principle of collecting or acquiring timely information that it judges to be the best available consistent with its mission requirements."[23] The DEIS/RMPA's habitat designations are contrary to these mandates and thus arbitrary and capricious. BLM has mapped habitat designations from PHMA to areas of critical environmental concern ("ACECs") without assessing site-specific data on habitat quality and/or GRSG population numbers. This is likely a result of the landscape-wide scale of the DEIS/RMPA: the document has been developed by BLM's

[20] *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 373 (1989).

[21] BLM's own data show that 87% of the loss in the Great Basin was from wildfire. *See* BLM, GRSG Plan Implementation Rangewide Monitoring Report for 2015–2020, at vii (2021).

[22] 40 C.F.R. § 1502.23.

[23] BLM, Information Quality Guidelines, at 9 (Apr. 2, 2018).

Washington Office and involves ten western states, 69 million acres of GRSG habitat, and amendments to 77 separate RMPs. Nonetheless, it is impermissible.

We are particularly worried about five aspects of BLM's habitat designations:

1. **In Alternative 3, BLM proposes to designate all HMA as PHMA. But it offers no scientific justification for this approach.** This indicates that, instead of resting on best available science or reliable information, BLM predicates its PHMA designations in Alternative 3 and, indeed, all alternatives, simply on BLM's wishes. This is contrary to NEPA and BLM policy—and, indeed, contrary to the DEIS/RMPA, which states that BLM will "adapt habitat management areas over time to reflect best available science" through its regular evaluation of RMPs and the resulting maintenance, amendment, or revision to the RMP.[24]

   It is crucial that BLM designates PHMA only where that designation is based on reliable information showing that an area is high-quality habitat. This is in part because BLM's promise that it will adapt HMA boundaries after designation appears chimerical: we know of no areas designated PHMA that have been de-designated after the fact; instead, we have been involved with extensive litigation in which we and other claimants argued that BLM's designations of SFA and PHMA included obvious nonhabitat.[25] The court agreed, citing as "implausible" BLM's designation of PHMA encompassing highways, an entire town, a landfill, and subdivisions.[26] Still, to our knowledge, the areas have not been de-designated.

2. **The definition of PHMA should not include potential habitat or non-habitat.** The DEIS/RMPA defines PHMA as including "high-quality habitat" as well as "areas with poor or potential habitat, and nonhabitat."[27] This differs markedly from the definition of PHMA in the 2020 FSEIS, which explains that PHMA includes "[a]reas that have been identified as having the highest conservation value to maintaining sustainable Greater Sage-Grouse populations. *These areas are occupied seasonally or year-round* and include breeding, late brood-rearing, and winter concentration areas."[28] Further, BLM's own Glossary of Common Terms states that habitat is "[a]n environment that *meets* a specific set of physical, biological, temporal, or spatial characteristics that satisfy the requirements of a plant or animal species or group of species for part or all of their life cycle."[29]

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[24] DEIS at 1-8.

[25] *See W. Expl., LLC v. DOI*, 250 F. Supp. 3d 718, 736 (D. Nev. 2017).

[26] *See id.* at 749.

[27] DEIS at Glossary-6.

[28] FSEIS at Glossary-5 (emphasis added).

[29] "Habitat" in BLM, Glossary of Common BLM Terms, https://eplanning.blm.gov/public_projects/lup/22652/34861/36285/1.2_Glossary_of_Common_BLM_Terms.pdf (emphasis added).

BLM does not provide a reasoned explanation for its departure from these policies. It does not explain why PHMA that was previously defined to include areas *actually occupied* by GRSG now encompasses areas that may or may not be occupied by GRSG. Nor does it explain the difference between its definition of habitat as *meeting* a set of characteristics that provide for the life of a species and its definition of priority *habitat* management areas as areas that include non-habitat.

BLM states that its definition of PHMA is largely the same as the definition of sage grouse management areas ("SGMA") given in the Utah Conservation Plan for Greater Sage-Grouse ("Utah Plan").[30] But the Utah Plan does not simply accept that SGMA will include non-habitat. Instead, it acknowledges that inclusion of non-habitat is a *limitation* of its modeling and, therefore, modeling is not the final word in habitat management area designation:

> Non-habitat areas within SGMAs include lands that do not contribute to the lifecycle of sage-grouse. There have been efforts to minimize the amount of non-habitat incorporated within the boundaries of the SGMAs, but given the topographic, physiographic and land-cover features within Utah—combined with the landscape scale of habitat use and multi-spatial scales of mapping details—the inclusion of some non-habitat was unavoidable. *As in other instances related to this Plan, on-the-ground delineation of non-habitat shall be the authoritative resource*.[31]

In addition to marking a departure from its own policy and from the Utah Plan that BLM purports to follow, the definition of PHMA as including non-habitat and potential habitat does not comport with recent Supreme Court precedent holding that an agency cannot manage an area for habitat where that area is not habitat. The Supreme Court recently rejected the US Fish and Wildlife Service's decision to manage habitat for the dusky gopher frog where the area did not presently support a dusky gopher frog population and could not presently constitute habitat for the species. The Court held, regarding designation of critical habitat under the Endangered Species Act, that the Secretary of the Interior is not authorized "to designate the area as critical habitat unless it is also habitat for the species."[32] The same holds true for BLM: BLM is not permitted to designate PHMA unless PHMA is also habitat for GRSG.

3. **As we observed in our comments on the 2015 LUPAs, the SFA boundaries in Alternative 1 have little or no basis in fact or actual on-the-ground conditions.** BLM and USFS must not proceed with the SFA without first proving that they are indeed comprised solely of highest-priority habitat. At a minimum, the final document should clearly provide for site specific ground-truthing where *any* interference with rights under

[30] DEIS at Glossary-6.

[31] State of Utah, Utah Conservation Plan for Greater Sage-Grouse, at 10 (Jan. 2019) (emphasis added).

[32] *Weyerhaeuser Co. v. United States Fish & Wildlife Serv.*, 586 U.S. 9, 20 (2018).

the Mining Law (including, but not limited to Section 22 rights of entry and occupancy and for exploration) and development is proposed.

4. **The Nevada Sage-grouse Conservation Plan ("State Plan") provides definitions of "suitable habitat" and "non-habitat" that conflict with BLM's definition of PHMA.** FLPMA requires that land use plans "be consistent with other Federal agency, state, and local plans to the maximum extent consistent with Federal law and FLPMA provisions."[33] The same requirements apply where BLM amends RMPs: "An amendment shall be made through . . . interagency coordination and consistency determination as prescribed in [43 C.F.R.] § 1610.3."[34]

   NEPA does not require maximal consistency between federal and state or local land use plans. But it does require that an EIS account for "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local land use plans, policies and controls for the area concerned."[35] Thus, "environmental impact statements *shall* discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or law (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law."[36]

   The DEIS/RMPA's definition of PHMA departs, without explanation, from the definitions of "habitat," "suitable habitat," and non-habitat" in the State Plan when it includes potential habitat and non-habitat in its definition of PHMA. The State Plan defines habitat as "[a]n area that *provides* food, cover, water, and space for an organism . . . [it provides] the resources and conditions present in an area that are required by a species to carry out its life."[37] By contrast, non-habitat includes "areas are identified as generally not meeting the needs for sage-grouse to survive and reproduce."[38] The State Plan uses a habitat suitability index developed by a team of experts assembled by the State including USGS and Nevada's Sagebrush Ecosystem Technical Team ("SETT") to assess whether an area is suitable habitat—including its present ability to support GRSG function. BLM does not, but must, explain how its designations of PHMA comport with the State Plan.

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[33] BLM, H-1601-1, at 6; *see also* 43 U.S.C. § 1712(c)(9) (Land use plans "shall be consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of" FLPMA.).

[34] 43 C.F.R. § 1610.5-5. The Department of the Interior's regulations for the Fish and Wildlife Service require it to coordinate with states regarding wildlife on federal public land: "the effective stewardship of fish and wildlife requires the cooperation of the several States and the Federal Government." *Id.* § 24.1(b).

[35] 40 C.F.R. § 1502.16(a)(5).

[36] *Id.* § 1506.2(d) (emphasis added); *see also* CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, at 23b, c (Mar. 16, 1981, amd. 1986) (After identifying any potential land use conflicts" between local, state, and federal plans, "the [federal] decisionmaker must weigh the significance of the conflicts.").

[37] State Plan at 9.

[38] *Id.*

5. **The Nevada Sage-grouse Conservation Plan ("State Plan") requires that habitat designations be ground-truthed to determine whether designated areas are habitat at the outset of the project. The DEIS/RMPA is inconsistent with this requirement.**[39] The State Plan specifically provides for ground-truthing: "At the onset of a proposed project, habitat evaluations or 'ground-truthing' of the project site and its surrounding areas shall be conducted by a qualified biologist with sage-grouse experience using [specified] methods . . . or other mutually agreed to scientifically valid techniques, to confirm habitat type."[40] By contrast, the DEIS/RMPA states: "*If* during consideration of a proposed action (project level authorization) within GRSG PHMA, GHMA, . . . and OHMA (in NV/CA) potential nonhabitat is identified, a field investigation *should* be conducted by a BLM biologist (or reviewed and accepted for confirmation)."[41]

   This aspect of the DEIS/RMPA differs from the State Plan in two important senses. First, it reverses the State Plan's project-specific process to determine whether habitat exists, instead presuming that habitat exists and establishing a process to determine that habitat does not.[42] Second, areas designated habitat appear to be presumed habitat until the proponent takes the initiative to identify "potential nonhabitat." This misallocates responsibility: where BLM proposes restrictive management allocations associated with PHMA and GHMA, the responsibility for accurately identifying habitat lies with BLM. BLM does not ensure maximal consistency with the State Plan or provide an explanation for inconsistency with this requirement.

BLM's habitat designations must be ground-truthed and must comport with the best available science or reliable information. The DEIS/RMPA must be significantly revised to comply with these mandates.

VI. The travel and road restrictions BLM proposes violate FLMPA, may amount to compensable takings, and must be revised to protect property rights in locatable minerals or reevaluated to determine compensation for takings.

The Nevada Constitution "contemplates expansive property rights in the context of takings claims."[43] "Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made."[44] It is well established that an individual's

[39] The DEIS/RMPA also appears to be inconsistent with other aspects of the State Plan, including aspects of its conservation credit system (CCS), inclusion of a disturbance cap which is absent in the State Plan, and use of "no net loss" rather than "net conservation gain." The FEIS/RMPA must describe and justify all inconsistencies with the State Plan.

[40] State Plan at 3.2.1.

[41] DEIS at 2-19.

[42] DEIS at 2-19.

[43] *McCarran Intern. Airport v. Sisolak*, 137 P.3d 1110, 1127 (Nev. 2006).

[44] Nev. Const. § 8(6).

real property interest in land supports such a claim.[45] Where Nevada courts have considered impairment of access, they have consistently held that if a property owner has a right of access and the government substantially impairs that right, a compensable taking exists.[46]

The General Mining Law guarantees a right of access, use and occupancy to all unpatented mining claims both before and after discovery of a valuable mineral deposit pursuant.[47] Further, the Surface Use Act guarantees the right to use and occupy federal lands with or without a mining claim, for prospecting, mining and processing and all uses reasonably incident thereto, including but not limited to ancillary use rights and rights of and associated with ingress and egress.[48] BLM's organic act, the Federal Land Policy and Management Act ("FLPMA") states that no provision within FLPMA and, of course, associated regulations "shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress."[49] BLM's regulatory authority is subject to these laws, and is limited to ensuring that unnecessary or undue degradation does not occur.[50] This is consistent with FLPMA's multiple-use mandate, which demands that BLM not prioritize conservation over other uses, including mineral location.

The road use and travel restrictions in the DEIS/RMPA do not comport with these mandates. Restrictions on ROWs associated with Alternatives 1, 3, 4, 5, and 6 could substantially impair access, in violation of FLPMA, to many locations in which WEX (or others similarly situated) holds a real property interest. Under Nevada law, this would constitute an unlawful governmental taking requiring, at a minimum, compensation. In particular, the road and travel restrictions that the DEIS/RMPA contemplates are likely to result in land-locked segments of roads on private land sections in the Nevada planning area. These restrictions on road uses on public lands may render the contiguous road segment on adjacent private land sections or mining claims inaccessible and therefore without economic value.

Our concerns include aspects of all alternatives that close areas to motorized travel or limit that travel to existing or specifically designated routes, areas designated for mineral withdrawal, disturbance caps, and lek buffers in PHMA and GHMA. Some closures would be permanent; even temporary closures are likely to be repeated seasonally, severely restricting our ability to operate. These restrictions have the real potential to put most other lands with supposed GRSG habitat (though, as noted, this habitat is often improperly designated) functionally off-limits to exploration and mining. The end result is a de facto withdrawal of all public lands in GRSG habitat. This contravenes FLPMA and could violate the Nevada Constitution. A FLPMA land use planning process may not impair the rights of locators, including rights of ingress or egress. BLM should remove the travel management restrictions from the FEIS/RMPA, or at the very least

[45] *See ASAP Storage, Inc. v. City of Sparks*, 173 P.3d 734, 738 (Nev. 2007).

[46] *See, e.g., Schwartz v. State*, 900 P.2d 939 (Nev. 1995).

[47] 30 U.S.C. § 22.

[48] *Id.* § 612(b).

[49] 43 U.S.C. § 1732(b).

[50] *See id.*; 43 C.F.R. § 3809.5.

clarify that transportation and travel management restrictions do not apply to locatable mineral operations. BLM's discretion is limited to preventing unnecessary or undue degradation and these restrictions go far beyond that ambit.

VII. Designation of ACECs is not supported by BLM's relevance, importance, and special management criteria.

BLM's regulations provide that an ACEC cannot be designated unless it meets three criteria:[51]

1. Relevance, or a "significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard";[52]

2. Importance, through which the relevant "value, resource, system, process, or hazard . . . ha[s] substantial significance and values. This generally requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern";[53]

3. A need for special management, meaning a management action to protect and prevent irreparable damage to relevant or important values and a management action that "would not be prescribed in the absence of the [ACEC] designation."[54]

Generally, BLM's proposed ACEC designations do not meet these criteria. It is crucial that BLM properly justify designation any ACECs because such designation would trigger the 43 C.F.R. § 3809.411(c) to file a plan of operations for surface disturbing activities in ACECs.

First, BLM's sole justification for any Nevada ACEC satisfying the relevance criterion is "[t]he presence of GRSG."[55] Thus, where GRSG are not present or—even worse—where GRSG habitat does not exist, BLM does not meet the relevance threshold.[56] BLM should presume that any area designated as an ACEC which has not been ground-truthed as functional GRSG habitat does not meet the relevance criterion until field surveys indicate presence of GRSG.

Second, BLM uses characteristics of PHMA to establish that ACECs are important. But the DEIS/RMPA does not designate all PHMA as ACEC. This means that PHMA characteristics cannot, alone, justify the ACEC as important. Beyond BLM's improper definition, described

[51] BLM appears to evaluate just relevance and importance in the DEIS/RMPA. This is inconsistent both with BLM regulations and with, for example, the Public Lands Rule that BLM recently finalized. That Rule states: three criteria must be met for ACEC designation, which are relevance, importance, and special management attention. 89 Fed. Reg. 40308, 40325 (May 9, 2024). BLM must address these three criteria in the DEIS/RMPA.

[52] 43 CFR § 1610.7-2(a)(1).

[53] *Id.* § 1610.7-2(a)(2).

[54] MS-1613.12.

[55] DEIS at 2-117.

[56] As noted above, an agency is generally not authorized to designate habitat where that area is not also habitat for the species." *See Weyerhaeuser*, 586 U.S. at 20.

above, of PHMA as including potential habitat and non-habitat, BLM defines PHMA as an area that has "the highest value to maintaining sustainable GRSG populations and can include breeding, late brood-rearing, winter concentration areas, and migration or connectivity corridors."[57] None of these characteristics, then, can be the basis for importance in the ACEC designation. Nonetheless, BLM uses population density and lek and habitat persistence as two of its evaluation criteria for ACEC importance. In the same vein, by themselves, PHMA characteristics of breeding, late brood-rearing, and winter concentration areas as well as migration or connectivity corridors do not by themselves prove importance. BLM fails to meet the importance criterion.

Third, BLM does not explain the special management actions that validate ACEC designation—and that undergird its decision to reverse its determinations from 2015 and 2019 that ACEC designation was not warranted. In the 2015 LUPAs, BLM "decided not to designate PHMA as ACECs in the applicable Records of Decision because it was determined that the management actions for PHMA would be sufficient to protect GRSG habitat and, as such, ACEC designation of PHMA was not required."[58] The 2019 RMPAs did not modify this determination—indeed, those land use plans and BLM's 2020 SEIS did not consider ACECs as a possible management action. BLM does not provide a reasoned explanation how at minimum four and at maximum nine intervening years have changed its repeated determinations that no special management was required to protect GRSG habitat.

Nor does BLM explain what special management *going beyond management possible under other designations* and *necessary to protect the values that make an area relevant and important* justify designation of the proposed ACECs. To the contrary, BLM explains that "[i]n general, management actions that protect resources (such as surface-disturbance restrictions and management for desired habitats) would help maintain and improve the relevant and important values within ACECs."[59] For example, "[i]dentifying ACECs as ROW exclusion or avoidance areas would protect relevant and important values by reducing (for avoidance areas) or eliminating (for exclusion areas) impacts from development requiring a ROW permit. Such developments include utilities, access roads, and renewable energy projects."[60] That is, the DEIS/RMPA itself makes clear that no special management actions are required to protect the areas BLM proposes as ACECs—these actions can be pursued through more generic management. Indeed, "PHMA, IHMA, and GHMA allocations provide a comprehensive management framework, covering a diverse array of management actions and restrictions in Alternatives 1–6, effectively capturing GRSG habitat and most ACECs."[61] BLM fails to meet the special management action criterion.

VIII. BLM should enforce the 2019 RMPAs, which have never been vacated.

[57] DEIS at Glossary-6.

[58] DEIS, Vol. III at 5-3.

[59] DEIS at 4-119.

[60] *Id.*

[61] *Id.* at 4-120. BLM adds a vague statement that "ACEC designation adds a layer of specificity, enabling a more targeted approach to address unique relevant and important values that might not be fully covered by the broader allocations." *Id.* But it never explains how the specificity of ACEC designation is a special management action necessary to protect relevant and important values.

BLM states in the DEIS/RMPA that it is not currently implementing the 2019 RMPAs because of a preliminary injunction issued by the United State District Court for the District of Idaho in *Western Watersheds Project v. Schneider*, 417 F. Supp. 3d 1319, 1335 (D. Idaho 2019). "Until the court makes a final ruling in the case or otherwise lifts the preliminary injunction," BLM concludes, "the BLM is enjoined from implementing the decisions from the 2019 RODs, and as such the actions contained in the 2015 RODs remain in effect."[62]

In reality, the court never vacated the 2019 RMPAs and BLM has simply decided not to update the court on management actions that have clear bearing on *Schneider* and that could result in the court lifting the injunction. In May 2021, at BLM's request, the court stayed proceedings in *Schneider*. This was in part because, as BLM stated in an early status report, BLM "may take actions, or initiate planning, that would obviate the need to proceed to the merits of the claims regarding compensatory mitigation policy and the 2019 Plans."[63] The status report BLM filed on May 21, 2024—BLM's most recent status report—said the same.[64]

BLM must explain why the 2020 SEIS it issued to supplement the 2019 Nevada RMPA and respond to issues raised in the District of Idaho litigation and the court's preliminary injunction, does not constitute an action or planning that obviates the need to proceed on the merits in that case. As a result of its SEIS analysis, BLM issued, in 2021, a ROD which "determined that [BLM's] decade-long planning and NEPA processes have sufficiently addressed Greater Sage-Grouse habitat conservation and no new land use planning process to consider additional alternatives or new information is warranted."[65] BLM does not explain why this conclusion has changed, thus why the 2024 planning effort is necessary. It offers vague descriptions of new science but does not cite specific and significant changes that require BLM to prolong uncertainty for regulated parties by—for the third time in less than a decade—engaging in a massive, landscape-scale land use plan for GRSG.

In effect, and unlawfully, BLM has rescinded the 2019 RMPAs and the 2021 ROD by unilaterally deciding to implement the 2015 LUPAs. BLM does not have "inherent authority" to withdraw a ROD for a land use plan amendment "absent compliance with the FLPMA's formal notice and comment proceedings."[66] BLM can amend land use plans, but to do so it must "follow[] procedures that," among other requirements, "require public participation."[67] Particularly, BLM cannot withdraw a land use plan, absent proper process, as a result of a "legal error" in the plan

[62] DEIS at 1-3.

[63] Defs.' Status Report, *W. Watersheds Project v. Schneider*, No. 1:16-CV-83-BLW (D. Idaho May 10, 2021), ECF 282 at 4.

[64] Defs.' Status Report, *W. Watersheds Project v. Schneider*, No. 1:16-CV-83-BLW (D. Idaho May 21, 2024), ECF 330 at 3.

[65] 2021 ROD, *supra* n.81, at 3.

[66] *Douglas Timber Operators, Inc. v. Salazar*, 774 F. Supp. 2d 245, 257–58 (D.D.C. 2011).

[67] *Id.* at 258.

revisions.[68] BLM knows such rescission is unlawful: in the District of Idaho case that led to the preliminary injunction, the court held that where BLM does not provide a reasoned explanation to support its change in position BLM's action was arbitrary and capricious.[69] There, BLM was required to explain the new need for the proposed mineral withdrawal in light of its previous cancellation of that withdrawal; here, BLM is required to explain the new need for the 2024 RMPAs in light of BLM's 2019 SEIS and 2021 ROD determining that the 2019 RMPAs should remain in effect.

IX. BLM must develop an effects analysis that, in particular, more fully addresses socioeconomic impacts of the various alternatives.

An agency must "take[] a 'hard look' at the environmental consequences of its proposed action."[70] Such discussion must be "fully informed" and "well considered."[71] As part of this discussion, NEPA requires that an EIS's environmental consequences analysis address, "[w]here applicable, economic and technical considerations."[72] "[W]hen the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss and give appropriate consideration to these effects on the human environment."[73] For at least the reasons listed below, the DEIS/RMPA does not take the requisite hard look.

- It makes no statement about the price of gold, silver, and copper in Nevada.

- The Affected Environment chapter does not include a section on geology; rather, the chapter contains a brief discussion of staking claims and states—oddly, because BLM regulates extensive mineral exploration and development in Nevada alone[74]—that "[b]ecause locatable minerals are governed under the requirements of the Mining Law of 1872 . . . the BLM has limited information regarding the existing conditions of locatable mineral development."[75] Given WEX's promising discoveries in Doby George and Wood Gulch, the failure to include this analysis is extremely troubling and demonstrates the material flaw: BLM deprives the public of an adequate presentation of geologic and socioeconomic baseline conditions upon which to base a thorough impacts analysis that

[68] *Id.*; *see also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1910 (2020).

[69] *W. Watersheds Project v. Bernhardt*, 519 F. Supp. 3d 763, 795 (D. Idaho 2021).

[70] *Center for Biological Diversity v. Dep't of Int.*, 623 F.3d 633 (9th Cir. 2010)

[71] *Id.*

[72] 40 C.F.R. § 1502.16(a)(10).

[73] *Id.* § 1502.16(b).

[74] By contrast, BLM's summary of one of the management goals in the 2019 RMPAs notes "BLM's regulatory authority over locatable mineral exploration and development." DEIS, Vol. III at 2-LANDER-16.

[75] DEIS at 3-40.

takes a hard look at the adverse environmental consequences resulting from the DEIS/RMPA on mineral resources and local and statewide socioeconomics.

- BLM does not provide a section on locatable minerals in Nevada in its Reasonably Foreseeable Development Scenario section, though it does discuss reasonably foreseeable development of fluid minerals and renewable energy in this section.[76] BLM is required to consider publicly available information to provide for a fully informed decision and reasonable opportunity for public comment. A wealth of data on reasonably foreseeable development of locatable minerals is available from the Nevada Bureau of Mines and Geology, USGS, and other published sources.

- BLM does not acknowledge that, without access roads to areas with mineral exploration and development potential, locatable mineral rights cannot be explored and developed. Without access to lands on which its various projects and claims are located, WEX's economic interests, as well as interests of the surrounding communities related to mineral exploration and development are critically threatened if not eliminated, in violation of the General Mining Law and FLPMA.

- BLM does not include analysis of cumulative impacts to mining activities and the economy in northern Nevada if the management decisions in the DEIS/RMPA are finalized. Given WEX's current relationships with vendors, contractors, and employees in Mountain City, Elko, Winnemucca, Reno, and neighboring areas, data exists to complete such an analysis and such an analysis must be completed in order for BLM to have taken a "hard look" at the impacts to mining interests and local economies relying on those interests. Restating economic data in its Socioeconomic Baseline Report[77] does not constitute a hard look at these impacts.

- BLM ignores its own report, cited above, stating that wildfire is the single largest cause of GRSG habitat loss and that anthropogenic disturbance accounts for less than 1% of PHMA losses.[78]

- BLM contemplates withdrawing approximately 3 million acres in Nevada from mineral entry, despite the fact the US Fish and Wildlife Service and BLM itself have determined that hardrock mining is not a significant threat to GRSG habitat. Any disturbance from locatable minerals can be mitigated through on-site measures based on site-specific data and in accordance with existing review in place under the State Plan.

[76] DEIS, Vol. III App. 12.

[77] *See, e.g.*, DEIS, Vol. III at 13-3-15.

[78] Greater Sage-Grouse Plan Implementation Rangewide Monitoring Report for 2015-2020 at 49 ("changes in estimated disturbance footprint area as well as energy and mining density within PHMAs/IHMAs at all scales (rangewide, regionally, and individual BSUs) have remained low (a 0.48% or less increase in area and 0.59 facilities per 640 acres increase in density)").

"General statements about 'possible' effects and 'some risk' do not constitute a hard look absent a justification regarding why more definitive information could not be provided."[79] The statements that "[c]hange in economic activity associated with impacts on locatable minerals due to change in the amount of land withdrawn from mineral entry" may have socioeconomic effect and that "[c]hanges to way of life, culture, social cohesion, and preservation of nonmarket values, including direct and indirect use and non-use values, for mineral development and production communities of interest, those involved in local governments, local residents, and other communities of interest that may value access to mineral resources" may also have effect" are insufficient.[80] There *will* be impacts as a result of the restrictions BLM contemplates—not just to mineral location but also regarding, for example, rights of way restrictions—that the DEIS/RMPA proposes. BLM must quantify these impacts in order to meet the hard look requirement and provide the public a reasonable opportunity to comment.

As we noted regarding the 2015 LUPAs, the description of the DEIS/RMPA's impact on locatable minerals is brief—a few pages, including an inadequate discussion of impacts of the mineral withdrawal that is meant solely to provide a comparison between alternatives and a paragraph-long discussion of socioeconomic impacts. BLM should discuss impacts on access to locatable minerals; timing and regulatory hurdles associated with exploration and development in the planning area; economic impacts to industry and communities who rely on locatable mineral development for personal income and tax revenue. The hard look must be "taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made," and the FEIS must include a "discussion of adverse impacts that does not improperly minimize negative side effects."[81] Because the DEIS/RMPA includes scant discussion of adverse impacts to mining exploration and development, it minimizes and insufficiently discusses impacts to exploration and development potential as well as economic losses to the state and local community from withdrawals or blanket conservation measures. The DEIS/RMPA does not take the required "hard look."

X. The disturbance cap is unnecessary and cannot legally be applied to locatable minerals.

BLM does not provide an explanation why a fixed disturbance cap is necessary to achieve its management goals, and such cap is inconsistent with the State Plan, which does not include a disturbance cap. Further, the 2015 LUPAs stated that "[a]lthough locatable mine sites are included in the degradation calculation, mining activities under the 1872 mining law may not be subject to the 3% disturbance cap."[82] The FEIS/RMPA should state the same.

XI. Conclusion

[79] *Nw. Env't Advocates v. National Marine Fisheries Serv.*, 460 F.3d 1125, 1141 (9th Cir. 2006).

[80] DEIS, Vol. III at 10-15.

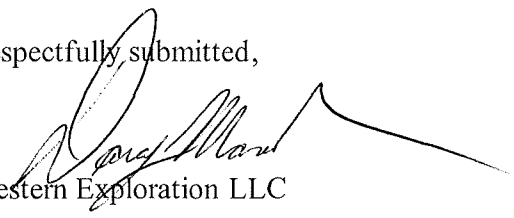
[81] *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472 (9th Cir. 2010).

[82] *See* Nevada 2015 LUPA at E-2.

WEX appreciates the opportunity to provide these comments to BLM. Though many of WEX's interests in Elko County lie on USFS land, WEX's interests on BLM land mean that it is directly affected by BLM's planning process and outcome, and we ask BLM—among other requests detailed above—to consider in the FEIS/RMPA the specifics of WEX's projects, BLM's mandate to achieve maximal consistency with the Nevada Sage-grouse Conservation Plan, facts on the ground relative to BLM's proposed habitat designations and management actions, and socioeconomic impacts that will result from those decisions. Please do not hesitate to reach out should you have questions or wish to discuss further.

If you have any questions concerning this submittal, please contact me at 775-329-8119.

Respectfully submitted,



Western Exploration LLC

Enclosures
cc: Lee Lizotte
Laura Granier

Backcountry Hunters & Anglers * National Audubon Society * The Nature Conservancy * National Wildlife Federation * Natural Resources Defense Council * Theodore Roosevelt Conservation Partnership

June 13, 2024

Quincy Bahr, Sage-grouse Project Manager
Pat Deibert, Sage-grouse Conservation Coordinator
Bureau of Land Management
440440 West 200 South, Suite 500
Salt Lake City, Utah 84101
BLM_HQ_GRSG_Planning@blm.gov

RE: Comments on Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement (DOI-BLM-WO-2300-2022-0001-RMP-EIS)

Dear Bureau of Land Management:

These comments are submitted on behalf of six national hunting, fishing, and conservation organizations that represent millions of Americans who care deeply about the sagebrush ecosystem and the species it supports, specifically the greater sage-grouse (GRSG). We thank the Bureau of Land Management (BLM) for initiating this planning process to conserve the GRSG across its range in order to secure durable, implementable plans well into the future. We hope that this third attempt at developing resource management plan amendments (RMPAs) and records of decision (RODs) for GRSG conservation will result in plans that reverse recent declines in GRSG populations, ensure that the species continues not to warrant listing as a threatened or endangered species, protect the most valuable intact landscapes, and achieve consistency across the species' range.

It is our sincere hope that this planning process will result in durable GRSG habitat management plans that can be successfully implemented over time, and will not result in additional plan revisions in the near term.

I. Summary

Rather than adopt its preferred alternative (alternative 5) as written, we recommend that the BLM adopt a variety of management approaches from across the alternatives analyzed, and we recommend additional changes and improvements to ensure that the BLM's GRSG management reflects the best available science. We recommend the agency:

- **Manage GRSG habitat to reverse ongoing population declines.** Management plans should be achievable, consistent, and durable. Management should conserve intact landscapes and

functioning sagebrush ecosystems, and support populations of GRSG sufficient to help avoid any listing under the Endangered Species Act of 1973 (ESA).

- **Use the best available science to identify and protect important GRSG habitat as priority habitat management areas (PHMA), and provide a higher level of protection for the "best of the best."** This approach will best allow the BLM to fulfill its multiple-use mandate, locating GRSG conservation actions where they will be most effective and authorizing other land allocations where they have the least conflict with GRSG conservation.
- **Apply the full mitigation hierarchy to all GRSG-impacting activities.** While compensatory mitigation can be used to offset impacts to GRSG, it is imperative that compensatory mitigation be used after impacts have been first avoided and minimized to the maximum extent practicable, and that it be done in a manner that addresses all indirect and cumulative impacts.
- **Use a consistent and transparent adaptive management approach to address future changes in conditions.** Adaptive management should be consistent, should address population and habitat triggers, and should be carried out in partnership with state wildlife agencies, affording them opportunities to identify triggers and initiate adaptive management, to make corrections if the BLM identifies a trigger in error, and to work with the BLM in addressing triggers.
- **Use the best available science to establish lek buffers.** Recent years have seen significant research into GRSG behavior, revealing that older approaches to lek buffers, many of which persist in the draft EIS, are inadequate to effectively protect GRSG.
- **Manage mineral development to avoid and minimize impacts to GRSG.** Currently, the most prevalent land allocations on BLM-managed lands that are incompatible with GRSG persistency are mineral development, including oil and gas, other fluid, and solid minerals. Areas of lesser importance for GRSG should be prioritized for these uses and important GRSG habitat should be subject to closures, stipulations, and withdrawals, as appropriate.
- **Apply disturbance caps consistently.** Disturbance caps are an effective backstop for identifying and responding to indirect and cumulative impacts to GRSG habitat that otherwise might go unaddressed. The BLM should apply them in a manner consistent with the best science, and with a minimum of exceptions.
- **Exclude renewable energy and high voltage transmission lines from important GRSG habitat.** The impacts of renewable energy on GRSG are significant, and current projections indicate that there is more than sufficient land available for renewable energy development outside of high-quality GRSG habitat. The BLM should exclude renewable energy developments from PHMA and avoid impacts to important GRSG habitat within general habitat management areas (GHMA).
- **Manage wild horses and burros to limit impacts on GRSG.** When wild horse populations exceed appropriate management levels (AMLs), GRSG populations suffer. The BLM must manage wild horses and burros within their AMLs.
- **Manage livestock grazing to conserve GRSG.** Unlike most other competing land allocations, livestock grazing can be consistent with GRSG population health, and can even improve habitat conditions for GRSG. To achieve this, the BLM must manage grazing to meet land health standards (LHS) and must consider specific circumstances unique to each location.

Each of these issues is more fully addressed in the following sections.

II. Principles for GRSG conservation.

The BLM's 2015 GRSG planning process was intended to "conserve, enhance, and restore GRSG habitat across the species' remaining range."[1] Yet GRSG population declines have continued under the 2015 RMPAs.[2] In 2019, the BLM completed a new GRSG planning process, in order to "enhance cooperation with the States by modifying the approach to Greater Sage-Grouse management in existing RMPs to better align with individual state plans and/or conservation measures and DOI and BLM policy."[3] However, the resulting plans were enjoined in part because the court found that in achieving those goals, the plans weakened GRSG conservation without providing any justification for doing so,[4] and GRSG management returned to the 2015 RMPAs. Because GRSG declines are ongoing, we support the BLM's decision to undertake the current planning process to improve management of GRSG habitat and ultimately reverse the ongoing losses of GRSG and GRSG habitat. We hope, however, that this planning process will result in durable RMPAs that are not litigated and do not require further revisions until after they have been implemented over a meaningful period of time for successful GRSG conservation.

The primary goal of this planning process should be to manage BLM lands for intact landscapes for GRSG across the range, which can be done by applying the best available science to GRSG HMA designations and land use allocations. The importance of intact landscapes is not limited to PHMA, but includes GHMA as well. Otherwise, we end up in a situation where we are managing for islands of habitat and isolated GSRG populations without adequate protections for corridors connecting those islands.[5]

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[1] E.g. Bureau of Land Management, ROD and ARMPAs/ARMPs for the Rocky Mountain GRSG Sub-Regions, September 2015, S-2, https://eplanning.blm.gov/public_projects/lup/68346/88888/106396/HiLine_District_ROD.pdf.

[2] B. G. Prochazka, P. S. Coates, C. L. Aldridge, M. S. O'Donnell, D. R. Edmunds, A. P. Monroe, Se. E. Hanser, L. A. Wiechman, and M. P. Chenaille, Range-wide population trend analysis for greater sage-grouse (Centrocercus urophasianus)—Updated 1960–2023, U.S. Geological Survey Data Report 1190, 2024, https://doi.org/10.3133/dr1190, https://pubs.usgs.gov/dr/1190/dr1190.pdf.

[3] E.g. Bureau of Land Management, Oregon Greater Sage-Grouse Proposed Resource Management Plan Amendment and Final Environmental Impact Statement, 2018, at Abstract, https://eplanning.blm.gov/public_projects/lup/103348/163460/199452/2018_Oregon_GRSG_Proposed_RMPA-Final_EIS_508.pdf.

[4] Western Watersheds Project v. Schneider, at Memorandum Decision and Order (Dckt. No. 189), No. 1:16-CV-83-BLW (D. Idaho 2019).

[5] See D. R. Edmunds, C. L. Aldridge, M. S. O'Donnell, and A. P. Monroe, "Greater sage-grouse population trends across Wyoming," *Journal of Wildlife Management* 82(2) (2018): 397-412, DOI:10.1002/jwmg.21386; A. W. Green, C. L. Aldridge, and M. S. O'Donnell, "Investigating impacts of oil and gas development on Greater Sage-Grouse," *Journal of Wildlife Management* 81(1) (2016): 46-57; Emma Suzuki Spence, Jeffrey L. Beck, and Andrew J. Gregory, "Probability of lek collapse is lower inside sage-grouse core areas—Effectiveness of conservation policy for a landscape species," *PloS ONE* 12(11) (2017): e0185885, https://doi.org/10.1371/journal.pone.0185885; Peter S. Coates, Brian G. Prochazka, Mark A. Ricca, Brian J. Halstead, Michael L. Casazza, Erik J. Blomberg, Brianne E. Brussee, Lief Wiechman, Joel Tebbenkamp, Scott C. Gardner, and Kerry P. Reese, "The relative importance of intrinsic and extrinsic drivers to population growth vary among local populations of Greater Sage-Grouse: An integrated population modeling approach," *The Auk* 135(2) (2018): 240–61, https://academic.oup.com/auk/article/135/2/240/5148801; S.E. Hanser, P.A. Deibert, J.C. Tull, N.B. Carr, C.L. Aldridge, T.C. Bargsten, T.J. Christiansen, P.S. Coates, M.R. Crist, K.E. Doherty, et al, Greater sage-grouse science (2015–17)—Synthesis and potential management implications: U.S. Geological Survey Open-File Report 2018–1017, https://pubs.usgs.gov/publication/ofr20181017.

Maintaining intact landscapes represents a simple and cost-effective approach to ameliorating these threats and preserving GRSG populations.[6] Given the greater challenges and expense involved in restoring native sage habitat, protecting the most valuable intact remaining areas is simple common sense. For this reason, we support the draft EIS in its approach to identifying and protecting PHMA, as described further below. Restoration efforts, including compensatory mitigation projects contemplated by the draft EIS, can then be focused on areas with potential for GRSG habitat expansion, such as Sagebrush Conservation Design (SCD) growth opportunity areas.[7]

A. Keep GRSG off the lists of threatened and endangered species.

The BLM's stated purpose for the current planning process is to "address GRSG habitat threats on BLM-administered public lands in context of the 2010 and 2015 USFWS GRSG listing decisions." However, the political and scientific context of GRSG conservation has evolved since that time. For example, the stated purpose of the BLM's 2019 GRSG management plans was not to conserve GRSG but to "enhance cooperation with the States by modifying the approach to Greater Sage-Grouse management in existing RMPs to better align with individual state plans and/or conservation measures and DOI and BLM policy."[8] But the resulting plans were enjoined in part because the court found that in achieving those goals, the plans weakened GRSG conservation without providing any justification for doing so.[9] To the extent that the BLM has incorporated certain management actions from the 2019 plans into the current planning process, including in the agency's preferred alternative (alternative 5), the agency risks encountering a similar outcome following potential judicial review of this planning process.

However, we believe that the range of alternatives presented in the draft EIS contains the elements of an effective and durable approach to GRSG habitat management and conservation, one that can avoid legal challenge, endure over time, and conserve the GRSG. Our comments are offered in the hope that they will help the BLM achieve this outcome.

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[6] See J. W. Connelly, S. T. Knick, M. A. Schroeder, and S. J. Stiver, Conservation assessment of greater sage-grouse and sagebrush habitats (unpublished report) (Cheynne, WY: Western Association of Fish and Wildlife Agencies, 2004); T. B. Cross, M. K. Schwartz, D. E. Naugle, B. C. Fedy, J. R. Row, and S. J. Oyler-McCance, "The genetic network of greater sage-grouse: Range-wide identification of keystone hubs of connectivity," *Ecology and Evolution* 8(11) (2018); 5394-5412; S. J. Oyler-McCance, T. B. Cross, J. R. Row, M. K. Schwartz, D. E. Naugle, J. A. Fike, K. Winiarski, and B. C. Fedy, "New strategies for characterizing genetic structure in wide-ranging, continuously distributed species: A Greater Sage-grouse case study," *PLoS ONE* 17(9) (2022): e0274189, https://doi.org/10.1371/journal.pone.0274189; Shawna J. Zimmerman, Cameron L. Aldridge, Michael S. O'Donnell, David R. Edmunds, Peter S. Coates, Brian G. Prochazka, Jennifer A. Fike, Todd B. Cross, Bradley C. Fedy, and Sara J. Oyler-McCance, "A genetic warning system for a hierarchically structured wildlife monitoring framework," *Ecological Applications* 33(3) (2023): e2787, https://doi.org/10.1002/eap.2787.

[7] See Kevin Doherty, David M. Theobald, John B. Bradford, Lief A. Wiechman, Geoffrey Bedrosian, Chad S. Boyd, Matthew Cahill, Peter S. Coates, Megan K. Creutzburg, Michele R. Crist, et al., A Sagebrush Conservation Design to Proactively Restore America's Sagebrush Biome, Open-File Report 2022–1081, U.S. Geological Survey, 2022, https://pubs.usgs.gov/of/2022/1081/ofr20221081.pdf.

[8] E.g. Bureau of Land Management, Oregon Greater Sage-Grouse Proposed Resource Management Plan Amendment and Final Environmental Impact Statement, 2018, at Abstract, https://eplanning.blm.gov/public_projects/lup/103348/163460/199452/2018_Oregon_GRSG_Proposed_RMPA-Final_EIS_508.pdf.

[9] Western Watersheds Project v. Schneider, at Memorandum Decision and Order (Dckt. No. 189), No. 1:16-CV-83-BLW.

B. Apply a consistent management approach.

Many aspects of the 2015 GRSG plans relied on state laws and policies or complex procedures that were subject to different implementation across BLM offices. Examples include lek buffer distances, compensatory mitigation approaches, and adaptive management. GRSG do not recognize nor respond differently across state lines. One of the strengths of the draft EIS is that it overwhelmingly applies the same management actions to the same land allocations across the species' range, which will promote consistency and efficiency in managing GRSG. It will also increase transparency, because stakeholders, including members of the public, will be able to look at BLM's approach in one state and be informed regarding what they can expect to see in another state.

C. Create durable management solutions.

We believe that one of the most important goals for this planning process should be to put an end to the politically driven back-and-forth that has characterized the last 8+ years of GRSG conservation. No one is well served by years of planning, litigating those plans, revising them, litigating them again, returning to earlier management approaches, starting a third planning process, etc. Not the species nor its habitat, not the BLM, not industries, and not other public lands users and stakeholders such as our organizations and members. The 2015 GRSG plans were expected to be implemented for *at least* 20 to 30 years, but instead they were implemented in varying degrees for less than 4 years, and some aspects such as sagebrush focal area (SFA) mineral withdrawals were never implemented.

III. Discussion of alternatives and identification of GRSG habitat management areas (HMAs).

We recommend that the BLM map HMA based on the best available science; exclude discretionary activities including wind, solar, and major ROWs from PHMA; allow criteria-based management in non-habitat within HMA if no indirect or direct impacts to GRSG result; and provide for the strictest management in high-value "best of the best" areas that could be designated as areas of critical environmental concern (ACECs).

A. No single identified alternative will achieve the goals of effective and durable GRSG conservation.

We do not believe that the BLM's preferred alternative, alternative 5, is sufficiently protective of GRSG, and we urge the agency to strengthen it as it completes a final EIS and RMPAs/RODs. Furthermore, we are unable to recommend any other single alternative as the best approach for GRSG management. Fortunately, the BLM is not required to select a specific alternative as it develops RMPAs and RODs.

As our comments on individual land allocations and management actions will make clear, we support elements from a variety of the proposed alternatives. Because the 2015 plans have become dated and have not been implemented in a way that has been proven to effectively conserve GRSG

habitat and populations, and the enjoined 2019 plans would be even less effective, we do not support alternatives 1 and 2. Given recent declines in GRSG populations, there is limited justification for supporting measures that are weaker than those presented in the 2015 plans. However, we recommend that the BLM adopt some or many elements from each of the other alternatives. Most of our comments focus on alternatives 4 and 5, which we believe represent the BLM's most successful efforts to respond to current science and to develop a workable compromise between GRSG protection and other land uses. In addition, we recommend a handful of ideas from alternative 3 relating to prioritization for oil and gas development, and the identification of high-value areas in the "best of the best" habitat for additional protections, where such an approach has local support.

B. The BLM should adopt the most recent science-based PHMA and GHMA mapping.

Given the variations across the proposed alternatives, there are a multitude of ways that the BLM could attempt to thread the needle between effective GRSG conservation and the other multiple-use demands on BLM lands. These include striking a balance between using mapping products developed through remote sensing and other technologies to identify areas for allowable allocations and land use practices with limiting impacts of development through project-level restrictions and mitigation requirements. The more consistently and effectively each of these are applied, the less need for the other to fill in the gaps. To that end, we believe that many of the more liberal land allocations and management actions included in proposed alternative 5 would be acceptable if paired with expansive and scientifically-defensible habitat management area (HMA) boundaries, which are most often proposed in alternative 4.

The differences in HMAs between alternatives 4 and 5 are significant. Under alternative 4, 36,701,000 acres would be designated as PHMA and 25,946,000 acres as GHMA. Under alternative 5, 34,803,000 acres would be designated as PHMA (5% fewer) and 23,718,000 acres as GHMA (8.5% fewer).

Furthermore, the differences would not be evenly distributed across the species' range. The majority of the difference in PHMA would be in Wyoming, where the more extensive PHMA proposed in alternative 4 would capture habitat that provides essential connectivity for GRSG populations and reflects the best available science.

Identifying these areas as PHMA will protect delineated, science supported, population connectivity corridors that maintain genetic exchange, including, for example, in northeastern Wyoming between sub-populations east and west of the Powder River and beyond to populations in Montana and the Dakotas. A similar situation can be found in the Red Desert Basin in south-central Wyoming, where the larger area of PHMA under alternative 4 would provide better connectivity for GRSG populations on either side of I-80. Utah is another state where there would be significantly fewer acres of PHMA under alternative 5 compared to alternative 4.

Another issue is that HMA boundaries under alternative 5 in Nevada are the result of clipping the USGS Coates model to state population management units (PMUs). Areas outside of the PMUs have not been occupied for "decades" but may still be viable habitat. The approach of clipping to PMUs is similar to that of clipping to known occupied area in several other states, resulting in many

isolated HMAs under alternative 5. In general, HMAs defined in alternative 4 are the most likely to meet the conservation elements of the purpose and need for this planning process and represent the full extent of modeled habitat from USGS. Clipping to PMUs would inappropriately confine the species to these borders, making it less likely for individual populations to survive, especially when inevitable disturbances arise.

Overall, we urge the BLM to adopt the mapping of PHMA and GHMA that reflects the best available science and is best for protecting and sustaining GRSG habitat and populations, consistent with the purposes of this planning process. Across most of the range, this means adopting the PHMA and GHMA mapping proposed in alternative 4, but we recognize that there may be some areas where additional information, including state input and the best available science, suggest that alternative 5 proposes stronger HMA mapping.

C. The BLM should designate a small number of high-value areas for heightened protection, potentially through ACEC designation.

In the preceding discussion of HMA mapping, we emphasized the efficiencies that could be gained if essential GRSG core and connectivity habitat is identified as PHMA and managed with stronger protections for GRSG from competing land allocations. This approach would ensure that more important areas for GRSG conservation receive more extensive protections, without unduly hampering the BLM's multiple-use obligations.

The same logic extends to the "best of the best" GRSG habitat, constituting a small number of uniquely irreplaceable areas characterized by high levels of GRSG connectivity, genetic exchange, population density, and intact sagebrush. These areas should be provided with even higher levels of protection, as the BLM proposes to do with ACECs identified under alternative 6. While we support the BLM's management approach to these areas, which equal or exceed the strongest approach to PHMA under alternative 4, the 11,139,472 acres being considered under alternative 6 are too expansive.

Instead, we recommend that a small number of these "best of the best" areas be considered for designation as ACECs based on local input and support, backed by peer-reviewed scientific literature that takes into account landscape intactness, range-wide population modeling, sage-grouse genetic flow/population connectivity, development potential, and spatially explicit models such as the SCD.

The BLM should consider applying additional management prescriptions to these highly-targeted areas, which could include the following:

- Designate as ROW exclusion areas, including prohibiting renewable energy generation sites and transmission lines;
- Recommend withdrawal from mineral entry;
- Close to leasing or allow leasing only with no surface occupancy with no exceptions, waivers, or modifications;
- When the primary term for existing leases end, allow the leases to expire;
- When reviewing new applications for permits to drill (or APD extensions), condition approval contingent upon both lease terms and ACEC management direction;

- Close to construction of new roads;
- Designate as seasonally closed to motor vehicle use, limited to motor vehicle use on designated routes, or limited to mechanized use on designated routes;
- Close to mineral material sales;
- Designate as Visual Resource Management Class I or II;
- Restrict construction of new structures and facilities unrelated to the preservation of GRSG and not necessary for the management of uses allowed under the land use plan; and
- Retain public lands in federal ownership.

Adopting the three-tiered approach of GHMA, PHMA, and "best of the best" will best ensure the BLM meaningfully protects the most important areas for GRSG conservation while allowing other important uses of BLM-managed lands in less sensitive areas, and so meet the agency's multiple-use obligations.

D. The final EIS should provide a scientifically-sound method for identifying non-habitat within HMAs and authorizing appropriate development.

We support the BLM's recognition that identified GRSG HMAs will inevitably include some areas that do not provide GRSG habitat and where development could be located without any adverse impacts to GRSG populations or prospects for population growth. We urge the BLM to engage in frequent and meaningful consultation with states, including concurrence of state wildlife agencies, in order to identify such areas.

We urge the BLM to use caution in authorizing development within non-habitat areas, because doing so may have indirect or cumulative effects on adjacent GRSG habitat and may preclude restoration of non-habitat areas to provide habitat value to GRSG populations. We broadly support the management approach proposed in both alternatives 4 and 5, requiring non-habitat exemptions be granted only on a project-by-project basis, after coordination with state and federal agencies, including with trained biologists, and with limitations on access to prevent new indirect impacts to GRSG habitat.

In order to ensure consistency at the state level and across the range, we recommend that any projects in non-habitat be authorized by the BLM State Director, with concurrence from the state wildlife management agency. Furthermore, adopting the more expansive and scientifically-supported designation of HMA under alternative 4, as we recommend, would expand the decision space and flexibility for site-specific management of non-habitat areas within HMAs. In all cases, siting based on non-habitat areas within HMAs should not lead to further landscape fragmentation, anthropogenic subsidies for predators, or restrict GRSG seasonal movement and genetic connectivity.

IV. The BLM must apply the full mitigation hierarchy to all land use activities impacting GRSG, use compensatory mitigation sparingly, fully compensate for all impacts, and achieve a minimum standard of no net loss.

Contrary to some past assertions, the BLM does have authority under FLPMA to require compensatory mitigation.[10] Therefore, we support the approach taken in alternatives 4 and 5, under which the BLM itself will require mitigation to a no net loss standard if the relevant state either does not require mitigation, or the state's mitigation program is determined by the BLM to be inconsistent with BLM/DOI policy. We further support the approach in alternative 4, under which the BLM would consider requiring mitigation *above* state requirements in areas where adaptive management triggers have been met.

A. Compensatory mitigation must, at minimum, meet a standard of "no net loss" and must fully account for all cumulative impacts.

Given the urgent need to restore GRSG populations, and our limited control over impacts such as wildfire, it makes little sense to intentionally create new demand for habitat restoration by allowing development impacts that must be compensated for by a development entity. Instead, we should focus on avoiding and minimizing any impacts from discretionary anthropogenic activities, especially in the best remaining GRSG habitat.

We recognize that no net loss has emerged as the most widely-accepted approach to compensatory mitigation for GRSG and other species, following the abrupt shift from the 2015 GRSG RMPAs that embraced net conservation benefit to the 2019 RMPAs that disclaimed any authority over compensatory mitigation under FLPMA. However, given the ongoing decline of GRSG populations, the urgent need to not only stabilize but increase the species' numbers, and the documented reality that successful restoration efforts in sagebrush habitat are risky and can take several decades to complete, we believe that compensation programs and activities designed to ensure *a minimum* of no net loss will be essential to successful conservation of the species. It is critical that the BLM have a high degree of confidence that direct, indirect, and cumulative impacts of infrastructure development and resource extraction will be offset with high quality, durable, timely, and additional compensatory mitigation projects; this includes adequately accounting for the risk of a mitigation project failing. Without effective mitigation to at least a no net loss standard, sage-grouse habitat will be lost by the proverbial "death by a thousand cuts" from development and other types of conversion.

One way to ensure that cumulative impacts are fully offset by compensatory mitigation is to implement mitigation before impacts are permitted, as opposed to afterwards. This avoids the risk of mitigation measures proving ephemeral, underfunded, or ineffective. Effective monitoring programs can then sustain this assurance over time. Mechanisms that can provide advance mitigation of impacts include conservation banks, habitat exchanges, and regional mitigation plans.

We recognize, however, that there are significant practical obstacles to consistently achieving this desired outcome. We support the approach taken by the draft EIS in applying compensatory mitigation, where the draft EIS recognizes that compensatory mitigation should account for the level of risk that a compensatory mitigation action may fail or not persist for the full duration of the impact compensated. We urge the BLM to apply this logic to compensatory mitigation of all types.

[10] See U.S. Department of the Interior Office of the Solicitor, M-37075, Withdrawal of M-37046 and Reinstatement of M-37039, "The Bureau of Land Management's Authority to Address Impacts of its Land Use Authorizations Through Mitigation."

B. Compensatory mitigation must follow recognized best practices to be effective.

To achieve effective compensatory mitigation with a minimum standard of no net loss, we urge the BLM to ensure that numerous well-established best practices for compensatory mitigation are incorporated into the final EIS and any subsequent mitigation programs designed to conserve GRSG.

Important features of compensatory mitigation have already been recognized by the BLM, and can be found in the agency's Mitigation Manual (1794-M) and Mitigation Handbook (H-1794-1). Another useful source is a 2015 report published by The Nature Conservancy, *Achieving Conservation and Development: Applying the Mitigation Hierarchy*.[11] We urge the BLM to carefully and thoroughly apply all of these principles to GRSG management, including:

- **Loss/gain methodology:** Quantify impacts and offsets through loss/gain methodologies based on a measure of the capacity of areas lost and offset, yielding a roughly equivalent amount and type of replacement resources.
- **Site selection, service areas, scale-appropriate decision making, appropriate actions, and habitat types:** Provide guidance on appropriate criteria for selecting offset sites, including distance from impact site, boundaries, and other criteria to ensure a reasonable relationship between the impacts authorized and the compensation intended to offset them.
- **Performance standards:** Establish performance standards and expected outcomes that are clear, science-based, and measurable; track compliance and effectiveness; and inform any needed adjustments.
- **Timeliness:** Strive to minimize the lag between the time unavoidable impacts occur and the time offsetting mitigation benefits are provided.
- **Duration:** Design mitigation measures to be in place at least as long as the duration of the direct and indirect impacts they offset, recognizing that additional time may be needed for GRSG utilization of restored habitat.
- **Durability:** Utilize tools such as land use planning, protective leases for public purposes, or restoration and mitigation leases to ensure that compensatory mitigation actions are sustained.
- **Additionality:** Ensure that compensatory mitigation actions are not duplicative of requirements under applicable federal or state law, government permits or contracts, or other government benefits programs.
- **Monitoring and adaptive management:** Utilize monitoring and adaptive management to ensure effective compensatory mitigation, including not only the HAF approach but also alternative approaches, including remote sensing.

C. The BLM may rely on state mitigation programs to achieve compensatory mitigation requirements for GRSG, provided those programs meet standards outlined in BLM policy.

[11] B. McKenney and J. Wilkinson, *Achieving Conservation and Development: 10 Principles for Applying the Mitigation Hierarchy* (The Nature Conservancy, 2015), https://www.conservationgateway.org/Documents/TNCApplyingTheMitigationHierarchy.pdf.

Following adoption of the 2015 RMPAs, it became apparent that, because some states had already completed or had begun efforts to develop compensatory mitigation strategies to implement conservation measures for the species, it would be redundant to develop federal mitigation strategies for each GRSG management zone. Subsequently, state mitigation programs became the preferred way to manage GRSG mitigation across the range.

States have adopted a variety of approaches to GRSG mitigation, and we support continued flexibility for states to design and apply different geographically-appropriate mitigation approaches. Variability from state-to-state allows for experimentation and, eventually, the ability to compare the effectiveness of different approaches across states.

However, to be effective, state mitigation programs should be rigorous and science-based, using the mitigation hierarchy, quantifying impacts and mitigation (debits and credits), applying mitigation at a variety of appropriate scales, applying a minimum standard of no net loss, and be implemented and overseen by technical teams that apply the best science. They should not be purely voluntary.

D. Compensatory mitigation may not be appropriate for certain impacts.

Even using such a properly-designed approach to compensatory mitigation, there are some impacts and locations where the BLM should not allow compensatory mitigation, instead requiring impacts, including indirect and cumulative impacts, to be completely eliminated through avoidance and minimization.

One such situation is the application of waivers, exemptions, and modifications (WEMs) for oil and gas development in GRSG PHMA. Under both alternatives 4 and 5, the draft EIS would authorize WEMs for oil and gas development within PHMA, both inside and outside of 0.6 miles from active leks. Alternatives 4 and 5 would both require compensatory mitigation for impacts deriving from these WEMs to provide appropriate offsets, durability, and risk management. Alternative 4 would further require advance implementation of compensatory mitigation and recognizes that compensatory mitigation may not be appropriate in some GRSG populations and habitat.

We urge the BLM to adopt a stronger approach, and not allow the use of compensatory mitigation to authorize WEMs in NSO areas, including within all PHMA outside of Wyoming and within lek buffers subject to NSO stipulations in Wyoming. As already noted, compensatory mitigation must meet very high standards to be effective, and its use invariably introduces some level of risk to protected resources such as GRSG. In the case of oil and gas development, there is simply no need to introduce this risk. The reason for NSO stipulations on most PHMA and Wyoming lek buffers is that they represent the core areas most essential to GRSG reproduction, population sustainment over time, and ultimately recovery of the species' population. NSO stipulations are a linchpin for any GRSG conservation strategy that focuses on core areas. Compensatory mitigation should not be used to authorize otherwise-prohibited development in NSO areas.[12]

[12] We note that the draft EIS analyzed the impacts of managing GRSG habitat without any WEMs at all, which places this recommendation within the range of alternatives analyzed.

V. The adaptive management program proposed by the draft EIS is a significant improvement over the 2015 approach and an essential component of a functional GRSG conservation plan.

A. The proposed adaptive management program achieves consistency across the range.

We applaud the proposed adaptive management program for its consistency. We support the draft EIS's approach of applying the same adaptive management framework across the GRSG's range, without any variation across states, including both the specific triggers for adaptive management and the methodology and timeframe for actions to be taken in response.

We also note that the BLM's approach is virtually the same across alternatives 3, 4, and 5. The only difference among them is that under alternative 5, new authorizations could be considered during the rapid assessment period for a trigger, subject to project-level NEPA. While it might be preferable in certain cases to foreclose this option, project-level NEPA that is rigorous and considers the ongoing adaptive management process could help to address any issues of concern.

In addition to consistency across the range, the draft EIS also provides a 60-day deadline for completion of rapid assessments, followed by 6 months for a more in-depth causal factor analysis (CFA), if necessary. This will help ensure that adaptive management is conducted in a timely manner, unlike under the 2015 RMPAs. We support the BLM's decision to adopt a more generous deadline for CFAs as they are highly trigger- and location-specific, and are only needed when rapid assessments are unable to identify the cause for a trigger being reached. We expect that in many cases, habitat triggers will result in conclusive rapid assessments, and allow adaptive management to be completed expeditiously.

B. The broad application of habitat-based adaptive management triggers will make adaptive management more effective.

We appreciate the fact that the draft EIS includes numerous adaptive management triggers based on habitat conditions, including a soft trigger when a neighborhood cluster loses more than 5% of its area capable of supporting sagebrush in a given year (including due to wildfire), a hard trigger when a neighborhood cluster drops below 65% of the area capable of supporting sagebrush, and a hard trigger when the 5% loss soft habitat trigger is met in 4 consecutive years.

We support the use of the best science in identifying habitat triggers. All adaptive management analyses should be transparent and repeatable, allowing verification by state wildlife agencies and the scientific community and the identification of best practices. To achieve this, we support the draft EIS's use of geospatial and remote-sensed data to assess sagebrush habitat, with additional analysis using the HAF considered when available.

C. The Targeted Annual Warning System (TAWS) provides a scientifically-sound method for identifying population-based adaptive management triggers.

Generally, we support the draft EIS' approach to population trend triggers. As the draft EIS states, "[t]he BLM must consider all available information regarding population threshold status." First and foremost, this includes state wildlife agency lek counts, state population trend analyses, and other state data, because state wildlife agencies have primary authority over fish and wildlife resources within their states and are responsible for managing GRSG populations.

While we support the BLM's decision to use the TAWS model as a means of identifying adaptive management triggers, we urge that it do so as a backstop, continuing to rely on and work with state wildlife agencies to collect, share, and analyze population data. The 2015 approach to population triggers varied by state and has been inconsistently applied. TAWS is the leading, USGS-developed, scientific tool available for identifying triggers. It provides a consistent methodology that automatically analyzes lek data from across the range, providing repeatable and verifiable results. That said, it is not perfect. It is a complex modeling tool that is inevitably subject to some errors.

For these reasons, we urge the BLM to use TAWS as one means of monitoring population fluctuations and to identify potential triggers. TAWS can serve as a consistent model across states, while still encouraging state wildlife agencies to collect and share population data and conduct their own, parallel analyses of potential changes and triggers. The BLM should also use and rely on data collected and analyses prepared by state wildlife agencies both as a means of identifying triggers and to determine responses.

Rather than give the state the opportunity to rebut a TAWS finding, we recommend the BLM make a commitment to work with state wildlife agencies to ground-truth any TAWS finding collaboratively. TAWS should act as a safety net, using its sensitive modeling capabilities to catch potential triggers that can then be verified by the BLM, state wildlife agencies, and others. This process will help ensure that no management changes are made due to TAWS errors.

The BLM has the ultimate obligation to determine when an adaptive management trigger has been met and how it will be addressed, and to take action in a timely manner. The collaborative process outlined here should facilitate that action in a way that reflects the best available science and is consistent with the purpose of this planning process.

VI. The BLM should follow well-established science when establishing lek buffers.

A 2016 study in Wyoming found that current regulations for oil and gas development are not preventing lek attendance declines in development areas. According to the Wyoming study, on average, lek attendance was stable when no oil and gas development was present within 4 miles. The study also noted that areas not protected under the Wyoming plan are not subject to Core Area (PHMA) regulations and thus may experience larger increases in oil and gas development and, therefore, larger declines in lek attendance, which often leads to complete lek abandonment.

Studies from different states in the GRSG range have looked at lek buffers and protection of breeding (e.g., nest sites) and summer habitats surrounding lek sites. A 2016 study in Utah recommended buffers of 3 to 5 miles between disturbed areas and sage-grouse breeding and

summer habitats, respectively. Similarly, a study in California suggests a 3.1-mile and 4.7-mile buffer for non-migratory and migratory sage-grouse populations, respectively.

As part of the 2015 GRSG RMPA planning process, the Department of the Interior commissioned the USGS to review the scientific information on conservation buffer distances for sage-grouse. The resulting study recommended there be a 3.1-mile buffer between leks and infrastructure related to energy development.

These, and other peer-reviewed studies well established as the best available science, intimate that the use of a smaller 0.6-mile buffer around leks in PHMA and 0.25-mile NSO buffer for leks in certain states or GHMA may not be adequate to reverse declining GRSG populations. In this planning process, the BLM should evaluate the latest science to determine whether the current lek buffers are sufficient. The BLM should also consider whether large variations in site-specific conditions, such as topography, merit site-specific consideration of ecologically appropriate set-backs.

In the draft EIS, descriptions of the various lek buffers proposed are scattered across the document, which unfortunately makes it difficult for readers to understand the full range of lek buffers proposed. Furthermore, they vary considerably across the range regarding both the land allocations subject to lek buffers and the size of the buffers, and so fail to achieve the goal of increasing consistency in management across the range.

It is clear, however, that most of the proposed buffers are insufficient to protect GRSG leks. They are inconsistent with the best available science as summarized in Mainier et al. 2014 and corroborated in more recent research, and will not sustain GRSG populations. Of particular concern are NSO buffers for fluid mineral development in Wyoming PHMA under alternative 5 (0.6 miles in PHMA), and in all GHMA under both alternatives 4 and 5 (variously 0.25, 0.6, or 2 miles), as well as buffers for minor ROWs (0.6 or 1.2 miles). According to Manier et al., 2014, all of these buffers should be at least 3.1 miles.

Although there are a minority of states where some state-specific criteria apply buffers more closely aligned with Manier et al., 2014 (primarily Colorado, Idaho, and Utah), we recommend the BLM reconsider the proposed lek buffers in the draft EIS and bring them more fully into alignment with the best available science.

VII. The BLM should manage mineral development, especially oil and gas development, to avoid impacts to GRSG to the maximum extent possible.

A. The BLM should prioritize areas outside of GRSG habitat for oil and gas development.

A key component of the 2015 RMPAs required the BLM to prioritize new oil and gas leasing outside of PHMA and GHMA in order to protect that habitat from future disturbance. Prioritization of development outside of priority habitat is also a core component of state GRSG regulations and

policies; for example, the Wyoming Greater sage-grouse Core Area Protection Executive Order states: "To ensure continued sustainability of Wyoming's economy, incentivizing and prioritizing development outside of Core Population Areas shall be a priority."[13]

The BLM should adopt a coherent prioritization that it can apply universally across field offices within identified GRSG PHMA and GHMA. In addition, appropriate prioritization guidance would be consistent with the BLM's newly-issued rule on onshore oil and gas development, which specifies that when offering lands for lease, the BLM must consider "[t]he presence of important fish and wildlife habitats or connectivity areas, giving preference to lands that would not impair the proper functioning of such habitats or corridors."[14]

We recommend that, as this planning process continues, the BLM adopt prioritization language proposed in alternative 3, which states: "If possible, place [oil and gas] development outside of PHMA (and IHMA)."

Additional approaches that the BLM should consider include the following:

- Look for opportunities to modify parcel boundaries to remove PHMA and GHMA before including them in lease sales;
- Take into account the availability of other parcels for lease in all field offices;
- If parcels are within identified PHMA and have low or moderate potential for oil and gas, they should not be included in a lease sale;
- If parcels are within identified PHMA and have high potential for oil and gas, are not in proximity to existing disturbance and/or require additional infrastructure to be developed, there should be a strong presumption against including them in a lease sale, especially if there are other parcels that do not have PHMA and do not have other high-priority resource conflicts;
- If parcels within identified PHMA or GHMA have high potential for oil and gas and are in close proximity to existing disturbance and infrastructure and/or are already within an existing oil and gas unit that has been analyzed in an EIS, then they may be considered for leasing;
- Parcels outside PHMA should be considered for leasing prior to parcels in PHMA;
- Parcels outside GHMA should be considered for leasing prior to parcels in GHMA; and
- For parcels in PHMA or GHMA that are included in lease sales, there should be an evaluation of other conditions of approval that will limit any new infrastructure or other stressors on sage-grouse.

B. We support the provision of alternative 5 that provides for no surface occupancy for oil and gas operations in PHMA outside of Wyoming.

By effectively prioritizing non-GRSG habitat for oil and gas development, the BLM can avoid the drastic step of closing vast acreages to oil and gas development entirely. For this reason, we do not support the approach of alternative 3, which would close all GRSG habitat to oil and gas leasing.

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[13] State of Wyoming, Executive Order 2019-3: Greater sage-grouse Core Area Protection, August 21, 2019. https://wgfd.wyo.gov/media/15359/download?inline

[14] Fluid Mineral Leases and Leasing Process, 89 Fed. Reg. 30916, 30986 (April 23, 2024).

Assuming that the BLM applies rigorous prioritization criteria and adopts the approach to PHMA and high-value areas laid out in section III of these comments, alternative 5 could be compatible with effective GRSG conservation. By applying NSO stipulations to oil and gas in PHMA across most of the range, the BLM will realize most of the benefits of the alternative 3 approach while still allowing access to important natural resources through directional drilling and other technologies. In Wyoming, which is blessed with an abundance of both GRSG and oil and gas resources, we support the alternative approach of applying NSO stipulations only within lek buffers. However, we reiterate our discussion in section VI of these comments, and urge the BLM to apply scientifically-sound lek buffers of no less than 3.1 miles, with NSO stipulations inside that area, as well as the other stipulations detailed in the draft EIS.[15]

C. We support the draft EIS's approach of using lek buffers and other stipulations to protect the most important GRSG habitat in GHMA.

Just as lek buffers can be effective in PHMA, assuming they are scientifically sound, they can also be used to conserve the most important GRSG habitat in GHMA. The draft EIS contemplates a variety of land allocation limitations within GHMA lek buffers, including both controlled surface use and timing limitation stipulations. These vary across state lines and between alternatives 4 and 5, and a detailed analysis of each stipulation is beyond the scope of these comments. In general, when finalizing these provisions in the final EIS and accompanying RMPAs/RODs, the BLM should apply the best available science and ensure that leks within GHMA are adequately protected from impacts of oil and gas and other fluid mineral development. These leks and the surrounding habitat represent the best hope for future expansion of GRSG populations, and their protection is key to long-term species survival.

D. WEMs should be considered for oil and gas development in GHMA, but not PHMA.

The BLM should limit the availability of waivers, exceptions, and modifications (WEMs) for oil and gas stipulations, as intended in the 2015 RMPAs, to ensure that these provisions do not undercut the purpose of the plans. In general, the requirements laid out in the draft EIS for projects to secure WEMs are appropriate and rigorous, including scientific analysis of the area by a biologist, requirements for the complete mitigation of any impacts on adjacent habitat, including indirect and cumulative impacts, clear documentation, and public review. We hope and expect that the BLM will both retain these requirements in the final EIS and then rigorously enforce them.

We wish to reiterate, however, that some impacts cannot be compensated for and therefore, ideally, WEMs for oil and gas would not be permitted in PHMA at all, but only in GHMA. Failing that, the use of WEMs in PHMA should be avoided to the maximum extent possible. We furthermore believe that the challenges of consistent and thorough application of compensatory mitigation requirements stacked on top of the challenges of consistent and thorough application of WEM

[15] See D. J. Manier, Z. H. Bowen, M. L. Brooks, M. L. Casazza, P. S. Coates, P. A. Deibert, S. S. Hanser, and D. H. Johnson, Conservation Buffer Distance Estimates for Greater Sage-Grouse—A Review, U.S. Geological Survey Open-File Report 2014-1239 (2014), https://doi.org/10.3133/ofr20141239. A larger buffer of 4 miles would be meaningfully more protective.

requirements introduces a high degree of risk of inconsistent and ineffective implementation. Given this risk, we recommend that at a minimum, the final EIS and RMPAs/RODs not authorize the use of compensatory mitigation as a means to justify authorization of WEMs in PHMA.

In addition, we recommend that any WEM authorizations included in the final EIS and RMPAs/RODs require the concurrence of the BLM State Director and applicable state wildlife agency. This approach would strengthen the consistency of the BLM's application of WEMs and ensure that WEMs are handled at the appropriate high level within the agency, reflecting their significance as departures from the land management practices adopted through the RMPA process. Moreover, it would ensure that the BLM considers the cumulative impacts of WEMs across a state when considering additional requests.

E. We support NSO and other appropriate stipulations for geothermal energy development.

Most forms of renewable energy will be addressed in section IX of these comments. Geothermal energy, however, is a fluid-based underground resource similar to oil and gas. Geothermal facilities draw water from deep underground where high ambient temperatures can be found, extract the heat energy from the water, and then return the water to the earth. Geothermal exploration and operations use technologies similar to both oil and gas development (bore holes, surface pumps, etc.) and renewable energy projects (transmission lines, gen-ties), all of which have adverse impacts on GRSG.[16]

On BLM-managed lands, geothermal energy is managed as a fluid mineral like oil and gas, and with minor exceptions is subject to the same management approach, including stipulations. Under both alternatives 4 and 5, the draft EIS would apply NSO stipulations to geothermal development in PHMA in every state (unlike oil and gas, where Wyoming PHMA would not be NSO under alternative 5), and other, less restrictive, stipulations in GHMA.

Adverse impacts to GRSG populations are not limited to geothermal energy operations but can also occur as a result of geothermal exploration. Especially because geothermal resources are concentrated in the desert southwest, even exploration could lead to severe local impacts on specific GRSG populations. Only rigorous project-level NEPA analysis can give the BLM and the public the necessary insight into those impacts to determine if a specific project should go forward or not.

We support the BLM's management approach to geothermal energy development, especially NSO stipulations for all PHMA. As with the oil and gas industry, we urge the agency to apply the best science and require appropriate (minimum 3.1-mile[17]) lek buffers in GHMA. We also recommend

[16] For discussion of geothermal impacts on GRSG, see Peter S. Coates, Brian G. Prochazka, Shawn T. O'Neil, Sarah C. Webster, Shawn Espinosa, Mark A. Ricca, Steven R. Mathews, Michael Casazza, and David J. Delehanty, "Geothermal energy production adversely affects a sensitive indicator species within sagebrush ecosystems in western North America," *Biological Conservation* 280 (April 2023): 109889. https://www.sciencedirect.com/science/article/pii/S0006320722004426; Alexandra Weill, "Buildings maps to help geothermal energy and greater sage-grouse coexist in Nevada's sagebrush country," *U.S. Geological Survey*, March 6, 2023. https://www.usgs.gov/news/featured-story/building-maps-help-geothermal-energy-and-greater-sage-grouse-coexist-nevadas

[17] See Manier et al., Conservation buffer distance estimates for Greater Sage-Grouse—A review.

geothermal energy development be kept out of high-value seasonal habitats and connectivity corridors.

F. The draft EIS provides appropriate limitations on saleable minerals, non-energy leasable minerals, coal mining, and locatable minerals for the protection of GRSG.

In the context of other (non-energy) minerals, accurate mapping of the most important habitat (see section III of these comments) is essential to achieving the purposes of this planning process and the BLM's multiple-use mission. All types of surface-disturbing mining are destructive to GRSG habitat and damaging to GRSG populations.[18] We support the draft EIS's strong, protective approach to mining activities in GRSG habitat, especially PHMA, under both alternatives 4 and 5.

We note that development of domestic sources of critical minerals is essential to meeting current goals for renewable energy development and addressing climate change. As such, it is essential the BLM strike a balance between competing land uses and meet its multiple-use obligations by protecting the most sensitive GRSG habitat, while developing mineral resources in the best areas for that purpose. Given the dire situation of GRSG populations and the purpose of this planning process, where those values conflict directly, the BLM must favor GRSG conservation. We support numerous provisions of the draft EIS that do just that.

We support closure of PHMA to saleable mineral development, excluding free use permits and expansions of existing pits, but we urge that those exclusions be used sparingly. We support closure of PHMA to non-energy leasable minerals, again urging that exceptions in California, Idaho, Nevada, and Wyoming be used sparingly.

For states where coal is present, we recognize the need to adopt a flexible approach that evaluates the suitability of a specific site for a specific coal mining method. However, we urge the BLM to be exceedingly thorough in project-level NEPA analysis, and extremely cautious when authorizing development. Because accessible coal deposits are highly localized, there is a risk of acute effects in one area destroying essential GRSG habitat, reducing habitat connectivity, and undermining goals for species recovery. To address this, it is essential that the BLM apply disturbance caps at the correct scale to avoid excessive development impacts in important GRSG areas.

Locatable mineral management is an area of comparative weakness in the draft EIS, if only because the BLM's intentions are unclear. As previously explained, the BLM never completed the withdrawal from mineral location and entry that was planned for SFAs in 2015 and relied upon by the U.S. Fish and Wildlife Service in its not warranted finding. Instead, that process is ongoing, with new NEPA documents expected later this year. Under alternative 3, the BLM would recommend all GRSG HMAs for withdrawal. But under alternatives 4 and 5, the draft EIS is silent on any potential mineral withdrawal, noting only that one area of Montana has already been withdrawn. Consistent with the approach articulated in section III of these comments, recommending that the BLM protect the most important, "best of the best" areas of GRSG habitat more highly than other PHMA, we request that the BLM consider advancing such areas for withdrawal from location and entry.

[18] See generally Remington et al., Sagebrush conservation strategy—Challenges to sagebrush conservation, 163-72.

VIII. We support the approach to disturbance caps under alternative 5, with certain improvements.

To further address the threat imposed by infrastructure associated with development, the 2015 RMPAs included disturbance caps for anthropogenic disturbance within PHMA. Once a disturbance cap is reached, additional development will not be permitted on federal lands within the relevant PHMA. Caps were set at 3% or 5%, depending on the state. We are pleased to see that the draft EIS is revisiting these disturbance caps. Most of the draft EIS' approach to disturbance caps is an improvement over the 2015 RMPAs, although there are opportunities for further improvement as well.

First, approaches to disturbance cap calculation are inconsistent across state lines. This is the case under the 2015 RMPAs, and while the draft EIS offers significant improvements in this area, inconsistencies remain. The first issue is the appropriate scale for calculation of disturbance caps. The 2015 plans used both the project scale and the biologically significant unit (BSU) scale, and BSUs were calculated differently in each state.[19] The draft EIS improves on this by using project-level and HAF fine scale population units. Compared to BSU scales, the HAF fine scale will introduce greater consistency to disturbance caps across the range and in some cases use smaller areas, allowing for more precise data.

There is also variation in definitions of what disturbances are actually included in the disturbance cap calculation. As previously discussed, disturbances are included regardless of surface ownership, in order to capture cumulative impacts. This important approach should be retained. We also appreciate the fact that project-level boundaries for disturbance calculations would be set at a 4-mile radius, which is a conservative approach consistent with the best science on impact distances.[20]

While the proposed disturbance cap calculation captures most important sources of anthropogenic disturbance, there are others that are omitted, as well as non-anthropogenic impacts such as wildfire. In addition, while most states would be subject to a disturbance cap of 3%, alternative 5 would apply a higher disturbance cap to the project-scale cap in Montana and Wyoming. This approach is consistent with the 2015 RMPAs and for good reason: the two issues are interrelated. In Montana and Wyoming, the 5% project-level disturbance cap would *include* both wildfire and agricultural impacts, two sources of disturbance that are omitted from the 3% disturbance caps in other states.

Because disturbance caps of 3% represent the best available science, and project-level caps of 5% in Montana and Wyoming are more inclusive and function as caps of 3% or less, we support the approach to disturbance caps proposed under alternative 5.

As in the 2015 RMPAs, the draft EIS includes criteria that would allow a project to be excepted from the disturbance cap and go forward even if it would cause cumulative disturbances that exceed the cap. In 2015, this was only available in Idaho, Montana, Nevada, and Wyoming, and in Idaho and Nevada it was qualified by a requirement that projects exceeding the cap would only be

[19] See, e.g. US. Forest Service, Greater Sage-Grouse Implementation Guide Minerals, Ver. 1.4, Utah, Nevada, Idaho/SW Montana, Wyoming, NW Colorado, accessed May 3, 2024, https://www.fs.usda.gov/sites/default/files/media_wysiwyg/minerals_guide_1_4_docx.pdf, 4.

[20] E.g. Manier et al., Conservation buffer distance estimates for Greater Sage-Grouse—A review.

permitted if they resulted in a net benefit to GRSG. Under the draft EIS, disturbance cap exceptions would be available in all states, although only at the project scale, and only if extensive requirements are met. In broad terms, these requirements include concurrence from the BLM State Director; proper and complete application of the mitigation hierarchy; and an additional analysis demonstrating consolidation of disturbances, use of RMP-designated utility corridors, or a net benefit to GRSG.

We caution the BLM against the application of disturbance cap exceptions except in very rare circumstances. The criteria laid out in the draft EIS are comprehensive, and if rigorously applied should reduce inadvertent impacts to GRSG populations due to exceptions. But allowing any disturbance cap exceptions creates a risk of indirect and cumulative impacts to GRSG populations. This is exactly the situation that disturbance caps are intended to forestall.

The requirement that disturbance cap exceptions receive the concurrence of the BLM State Director is a useful backstop that would ensure exceptions are granted in consistent (and hopefully rare) circumstances. If disturbance cap exceptions are included in the final EIS and RMPAs/RODs, we recommend that this requirement be retained. We also support the requirement that when compensatory mitigation is applied to disturbance cap exceptions, it should either be completed in advance of disturbances (alternative 4), or account for the level of risk that a compensatory mitigation action may fail or not persist for the full duration of the impact compensated for (alternative 5).

IX. We support the approach under alternative 4 of excluding renewable energy infrastructure from important GRSG habitat.

We support the approach proposed for wind and solar energy in alternative 4 of the draft EIS, and recommend the BLM close all GRSG PHMA to renewable energy development. This will further the approach of supporting GRSG populations by managing BLM land for intact landscapes. In addition, locating renewable energy development in areas with no to low conflict with GRSG will enable faster permitting and simpler project-level NEPA review for renewable energy projects.

We also support alternative 4's approach to GHMA, which would be managed as avoidance areas for wind and solar development, bolstered by lek and habitat buffers and protection for high-value seasonal habitats and connectivity corridors. We recommend that lek and habitat buffers reflect the best available science on avoidance distances for various renewable energy resources.

Finally, we note that the BLM is currently in the process of moving from a draft to final EIS in its Solar PEIS planning process, and urge that the Solar PEIS be aligned with this planning process so that the same approach to GRSG habitat is adopted in each.

The direct and indirect impacts of renewable energy development on GRSG, like other forms of infrastructure, are considerable and well documented. Renewable energy infrastructure generally has a large footprint per megawatt (especially solar energy), tall structures (especially wind and transmission lines), and is characterized by ground disturbance such as road construction, site

clearing, grading, vegetation and soil removal, etc.[21] Although vegetation may be restored following construction and/or decommissioning of renewable energy facilities, research into how much GRSG respond to the presence/absence of vegetation vs. artificial structures themselves is ongoing.[22]

Renewable energy infrastructure impacts GRSG populations in similar ways to other energy and related infrastructure on the landscape. This was recently validated by a meta-analysis of 21 other studies that concluded that there are no "obvious differences in the effect sizes between types of infrastructure" and therefore "current grouse conservation actions could be applicable to renewable energy development."[23] Furthermore, most types of renewable energy development presently lack widely-accepted best management practices or consistent regulatory schemes.[24] Accordingly, renewable energy development in GRSG habitat should be approached with similar caution as oil and gas development.

Additionally, based on studies such as the BLM's own analysis in the Solar PEIS, other existing reasonably foreseeable development scenarios, and projections for various types of renewable energy development, we believe there is more than enough BLM-managed land available to accommodate the necessary renewable energy development expected in the foreseeable future without making important GRSG habitat available.[25]

One of the largest current challenges for renewable energy projects is delivering the electricity they produce to market, which requires new and upgraded long-distance transmission lines, which have significant effects on wildlife including GRSG. Supporting towers are tall structures that GRSG will avoid at a distance of 4 miles or more,[26] the conductor is a source of potential bird collisions (unless properly marked), and the corridor itself introduces a linear feature that fragments and bisects habitat. Areas around transmission line towers and sometimes between them may be kept clear of

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[21] See generally Remington et al., Sagebrush conservation strategy—Challenges to sagebrush conservation, 172-76. See also John D. Lloyd, Cameron L. Aldridge, Taber D. Allison, Chad W. LeBeau, Lance B. McNew, and Virginia L. Winder, "Prairie grouse and wind energy: The state of the science and implications for risk assessment," *Wildlife Society Bulletin* 2022: e1305. https://doi.org/10.1002/wsb.1305

[22] For example, recent research suggests that GRSG populations can tolerate the presence of a solar energy facility, see Michael B. Gerringer, Kurt T. Smith, and Karl L. Kosciuch, "Observations of Greater Sage-Grouse at a solar energy facility in Wyoming," *Western North American Naturalist* 82(1) (2022); 196-200. More research will be needed to see if that population is able to sustain itself over time, as avoidance behavior is not immediate but occurs over time as yearlings abandon impacted areas.

[23] C. LeBeau, K. Smith, S. Howlin, A, Tredennick, and K. Kosciuch, "A meta-analysis investigating the effects of energy infrastructure proximity on grouse demography and space use," *Wildlife Biology* 2023(5) (2023), e01087.

[24] A notable exception is the wind industry, for which there is the U.S. Fish and Wildlife Service's Land-Based Wind Energy Guidelines. U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines, March 23, 2012. https://www.fws.gov/sites/default/files/documents/land-based-wind-energy-guidelines.pdf In addition, for solar energy development, numerous states have developed their guidelines. See, e.g. Association of Fish and Wildlife Agencies, "Solar Wildlife Working Group," accessed March 5, 2024. https://www.fishwildlife.org/afwa-acts/afwa-committees/solar-wildlife-working-group However, no renewable energy industry presently has anything like the "Gold Book" for oil and gas development. See Bureau of Land Management, The Gold Book: Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development, 2007, available at https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/operations-and-production/the-gold-book.

[25] For a comprehensive analysis of renewable energy development siting, see The Nature Conservancy, "Power of Place: Clean Energy Solutions that Protect People and Nature," May 9, 2023. https://www.nature.org/en-us/what-we-do/our-priorities/tackle-climate-change/climate-change-stories/power-of-place and associated documents.

[26] See Manier et al., Conservation buffer distance estimates for Greater Sage-Grouse—A review.

vegetation, may be locations for surface roads, and may become vectors for GRSG predators, invasive species, and wildfires.

We urge the BLM to adopt in the final EIS and RMPAs/RODs an approach to transmission line ROWS *at least* as protective as alternative 4. Transmission lines should not be authorized outside of designated utility corridors, nor should new corridors be placed within PHMA. For those locations where transmission lines already exist, or where valid existing rights necessitate construction of new gen-ties in GRSG habitat, the BLM should apply the avoidance criteria and additional protections for breeding, nesting, and other high-value/limiting seasonal habitat proposed under alternative 4.

X. The BLM must manage protected wild horses and burros to limit impacts on GRSG habitat.

Any of the approaches proposed in the draft EIS, if successfully implemented, would address this issue, including the alternative 5 approach, management of wild horses and burros within the full range of AMLs. We support continued inclusion of GRSG habitat objectives in wild horse and burro management, adaptive management of wild horse and burro populations, and changes to AMLs as necessary.

XI. The BLM must manage livestock grazing to conserve GRSG and meet rangeland health objectives.

In the draft EIS, the BLM describes two different approaches to grazing management for GRSG, neither of which are satisfactory. Under alternative 3, all GRSG HMAs would be closed to grazing. This approach is unnecessarily cautious and could negatively impact GRSG, because grazing can be an important rangeland management tool that can be strategically used to benefit GRSG (and other wildlife) provided that appropriate purpose, location, timing, duration, and intensity of grazing are taken into consideration.

Under alternatives 4 and 5, the BLM would make only minor adjustments to grazing leases, land health assessments (LHAs), and LHS in order to restore, maintain, or enhance GRSG habitat. Specific range-management actions would pertain to timing, intensity, duration, and frequency of grazing; application of the HAF to LHAs; specific adaptive management thresholds and responses to improve GRSG habitat suitability (required under alternative 4, optional under alternative 5); removal or modification of harmful range improvements; improved livestock management through technologies such as virtual fencing; removal of existing fencing; and the option of retiring grazing permits or leases when voluntarily relinquished.

All of these tools identified in alternatives 4 and 5 are worthwhile and, if fully implemented, could improve rangeland management for GRSG while moving more BLM-managed rangelands towards compliance with LHS. We support responsible grazing within both PHMA and GHMA, provided that appropriate management actions are required. Ultimately, improvements to public land livestock grazing will only occur with the timely completion of LHAs, which requires appropriate staffing and implementation of the improvements made to the process by the Public Lands Rule,

which are outside the scope of these plan amendments. For this reason, we support the approach taken in alternatives 4 and 5, rather than alternative 3.

XII. Conclusion.

This planning process – the third for GRSG since 2015 – comes at an incredibly important time. The 2015 RMPAs, which succeeded in the important goal of securing "not warranted" status for GRSG under the ESA, were never fully implemented. The BLM's subsequent attempt to open the plans and make them more agreeable to states did not withstand judicial scrutiny.

It is our sincere hope that the BLM can now develop an approach that successfully balances GRSG conservation with other uses across the 69 million acres of GRSG habitat within the planning area. By doing so, the BLM will meet its multiple use obligations and create a durable approach that can be fully implemented over the coming years and decades.

Respectfully,

Sara Brodnax
Director, Public Lands Policy
National Audubon Society
sara.brodnax@audubon.org

Bailey Brennan
Public Lands Counsel
National Wildlife Federation
brennanb@nwf.org

Matt Cahill
Director, Sagebrush Sea Program
The Nature Conservancy
matthew.cahill@tnc.org

Madeleine West
Director, Center for Public Lands
Theodore Roosevelt Conservation Partnership
mwest@trcp.org

Kaden McArthur
Government Relations Manager
Backcountry Hunters & Anglers
mcarthur@backcountryhunters.org

Bobby McEnaney
Director, Land Conservation
Natural Resources Defense Council
bmcenaney@nrdc.org

Grandfather - Colorado Resident for more than 45 years ——.

May 20, 2024

Re: GRSG Habitat
To: Those Concerned with Planning

The Greater Sage Grouse is an indigenous species to our Western Colorado Environment. I believe that alternative 3 will provide the best protection of this important 'animal' - A Primary Habitat Management Area would provide the protection needed to preserve this important species - I appreciate your taking a very critical and positive action —. Thank you for your action to maintain the Grouse for our present and future generations. Sincerely, Bryan Sias

Bryan Sims
1160 DeeVee Drive
Gr Jct, Colo. 81503

GRAND JUNCTION CO 815
28 MAY 2024 PM 1 L

BLM Utah State Office
440 West 200 South
#500
Salt Lake City, Utah
84101

Attn: HQ GRSG RMPA

June 13, 2024

Submitted electronically via email to BLM_HQ_GRSG_Planning@blm.gov

Sharif Branham, Assistant Director for Resources and Planning
Bureau of Land Management
BLM Utah State Office
ATTN: HQ GRSG RMPA,
440 West 200 South #500
Salt Lake City, UT 84101.

Pat Deibert, National Sage-Grouse Conservation Coordinator
Bureau of Land Management
5353 Yellowstone Road
Cheyenne, WY 82009

Re: Montana Mining Association Comments on Draft Resource Management Plan Amendment and Draft Environmental Impact Statement for Greater Sage-Grouse Rangewide Planning

Dear Mr. Branham and Ms. Deibert,

Montana Mining Association ("MMA") appreciates the opportunity to submit these comments on the Bureau of Land Management's ("BLM") Draft Resource Management Plan Amendment ("RMPA") and Draft Environmental Impact Statement ("EIS") for Greater Sage-Grouse Rangewide Planning (collectively, the "Draft RMPA/EIS").[1]

MMA is an industry organization representing the mining community throughout the state of Montana. MMA's mission promotes and protects the responsible mining of critical and important metal and mineral resources within Montana for purposes of furthering energy independence, combating climate change, and feeding the supply chains of our country. This mission includes engaging with federal agencies as they craft policies for land use and natural resource planning, as well as advocacy at the agency and executive level on behalf of the mining industry. Although mineral development can impact the natural environment, MMA believes that careful planning and mitigation can minimize such impacts, often to the long-term net benefit of the environment. MMA additionally believes that conservation and mineral development are far from being mutually exclusive, and as Congress intended, there is room for multiple uses on public lands without blocking mining and without halting conservation efforts.

With the above principles in mind, MMA is concerned that the BLM's attempt to update 77 resource management plans across 10 states all at once, in one RMPA/EIS, has resulted in an unwieldy document that is riddled with inconsistencies and information gaps, and fails to give stakeholders sufficient information to fully understand and evaluate what is being proposed. MMA is further concerned that the Draft RMPA/EIS proposes changes that would stifle the development of mineral resources that are critically important to our state's and our nation's

[1] 89 Fed. Reg. 18963 (March 15, 2024).

economy, and in doing so, would frustrate the Biden Administration's goals of growing domestically sourced minerals and clean energy production. Moreover, the Draft RMPA/EIS misses opportunities to improve upon and make more predictable the current sage-grouse management plans.

Consequently, MMA urges BLM to withdraw the Draft RMPA/EIS. As drafted, the cost of the 10-state regionwide effort is inefficient planning that is not tailored to the specific needs of the local sage-grouse populations or diverse local uses and, ultimately, a subpar management plan that is legally and substantively inadequate. At the very least, these failures must be rectified in a revised draft RMPA and new or supplemental draft EIS, accompanied by the opportunity for another round of comments prior to a final decision. The better solution, however, is to take on updating sage-grouse resource management plans in a more focused way, at a more local level, soliciting more local input, and evaluating local effects to other species and other multiple uses rather than trying to take on an a 10-state effort. Correspondingly, the BLM should work with affected states and key stakeholders to develop state or region-specific supplemental environmental impacts statements that adequately analyze the impacts of each of the proposed alternatives on local environments, communities, and projects.

Further, MMA is concerned with the amount of time provided stakeholders to review the Draft RMPA/EIS. As we identified in our earlier letter requesting an extension of time, the amount of information in the Draft RMPA/EIS, the way in which the information is provided, and the far-reaching implications all lead to a scenario where additional time should have been given. Rather, we never received a response regarding our request for extension. Given the potential impacts this rule will have to the mining community, we would have at least expected an acknowledgement from BLM regarding the time frame and an explanation as to why it could not be extended.

While MMA has concerns with all of the alternatives presented in the Draft RMPA/EIS, our comments below focus on those we believe are most likely to be of practical use to the BLM. Accordingly, our comments primarily focus on concerns with and occasional accolades for the BLM's Preferred Alternative (Alternative 5), alongside targeted concerns with other alternatives as necessary and prudent, and strong overall opposition to Alternative 3. MMA's specific recommendations are detailed in the discussion below, and are summarized as follows:

- The Draft RMPA/EIS is riddled with inconsistences, errors, and information gaps that must be resolved in a revised draft RMPA and supplemental draft EIS and allow for another round of public comments.
- The overall structure of the Draft RMPA/EIS should be retooled to make clear what aspects of each state's (and each Field Office's) RMPAs would stay the same or would change, and specifically how, under each alternative.
- More in-depth analysis needs to be added to the EIS on the impacts of proposed closures and/or severe restrictions on various types of mineral development for state and local economies and communities.
- The final RMPA should retain the aspects of the BLM's Preferred Alternative 5 that would: (i) eliminate the previously proposed withdrawals of locatable minerals; (ii) not designate any new ACECs; and (iii) reduce the compensatory mitigation standard to "no net habitat loss."

- The final RMPA should amend many aspects of the Preferred Alternative, including the following: (i) the BLM needs to clarify that density caps, disturbance caps, and buffers all do not apply to locatable mineral exploration and development authorized by the Mining Law of 1872; (ii) additional analysis of and support for the changes to the disturbance cap calculations must be provided; (iii) the BLM should work with the State of Montana and local communities to determine how to best support exploration and development of important minerals in southwest Montana while implementing best management practices for environmental protection as appropriate; (vi) the timing of compensatory mitigation should be clarified, and additional flexibility on the location of mitigation projects should be added; (vii) rights-of-way management in Montana should be made to be no more restrictive than in other states.
- Alternative 3—which would close all designated sage-grouse habitat to virtually any new development of natural resources, energy and utility infrastructure, and livestock grazing—is untenable with sustaining a modern economy and should be given no further consideration.

1. OVERALL LACK OF CLARITY

The 2,400+ page Draft RMPA/EIS, together with the thousands of pages of cited studies and gigabytes of mapping shapefiles, is too much and too little at the same time—despite the overwhelming number of pages and files, it doesn't actually tell the public what they need to know. The Draft RMPA/EIS lacks clarity on which aspects of each state's current RMPAs will remain in effect and specifically what would be changed under each of the alternatives, and how. The BLM's approach requires reviewing a combination of old plans and new changes, plus state plans and federal-state agreements. Adding to this confusion is the fact that there has been litigation over and judicial stays of some states' old plans. Still more uncertainty is added by the Draft RMPA/EIS (as well as current plans) allowing states to impose additional mitigation and BMP requirements. This confusion could be avoided by either approaching this process with more time or addressing it in a more local manner.

Compounding the confusing document structure and substance is the fact that the Draft RMPA/EIS is riddled with information gaps and inconsistencies between the maps and the text, including but not limited to: (i) inconsistencies in whether or where locatable mineral withdrawals are proposed in Alternatives 3 through 6; (ii) inconsistencies in when compensatory mitigation would be required in Alternative 5; (iii) inconsistencies in how ACECs and PHMA would be managed under Alternative 3; (iv) failure to clarify whether density caps are proposed to continue in Alternatives 3 through 6; (v) failure to clarify that disturbance caps, density caps, and lek buffers cannot apply to development of locatable minerals; (vi) failure to analyze in any depth the state and local economic impacts of restricted mineral development, particularly for locatable minerals. These inconsistencies and failures are further detailed in our comments below. Not only must the BLM resolve these specific inconsistencies and gaps in a revised draft RMPA and supplemental draft EIS, the BLM needs to conduct a comprehensive revision and proofreading of the entire document and allow for another round of public comments.

The Draft's scattered, opaque, and haphazard approach makes it difficult to accurately assess and provide meaningful comments on the Draft RMPA/EIS, and makes compliance determinations and planning difficult for agencies, industry, and conservationists alike. Moreover, such disarray does not comport with the National Environmental Policy Act ("NEPA") and the

Administrative Procedure Act ("APA")—without publishing complete information and providing the public and itself with a clear understanding of what is being proposed, the BLM cannot give the requisite "hard look" at the impacts of its proposal under NEPA,[2] nor has BLM met its APA obligations to publish "the terms or substance of the proposed rule" and "give interested persons an opportunity to participate in the rule making" in meaningful way.[3] Given the lack of clarity and potential NEPA and APA implications, MMA urges the BLM to restart the entire process. At the very least, a revised or supplemental draft of the RMPA and EIS must be issued for additional public review and comment prior to finalization.

2. LOCATABLE MINERALS IN ALTERNATIVES 4, 5, AND 6

MMA supports the approach in the BLM's Preferred Alternative 5 and Alternative 6 that would eliminate or nearly eliminate the mineral withdrawals that had been proposed under Alternative 1.[4] We also support the fact that Alternative 5 does not propose any new ACECs in Montana. It is critical to keep public lands open for exploration and development of minerals that are important for state and local economies and key ingredients to the modernization of this country, including renewable energy and electric vehicle technology, medical devices, and building materials. Not only is responsible development of domestic minerals—particularly in southwest Montana—important for Montana's economy, it is key to the Biden Administration's goals to shift to clean energy, tackle climate change, and promote environmental stewardship, all while investing in invest in domestic jobs, domestic production and manufacturing, and the United States economy. Specifically, Executive Order 14017, "On America's Supply Chains," makes it a presidential priority to "revitalize and rebuild domestic manufacturing" and "domestic production," and directs cabinet officials to develop policies to "sustainably reshor[e] supply chains," "develop[] domestic supplies," and encourage domestic "investment in critical goods and materials." In addition, the Inflation Reduction Act incentivizes electric vehicle batteries and solar and wind projects made with domestic content or domestic supply chains.[5]

Responsible development of domestic minerals on public lands is also a statutory mandate and national priority in multiple statutes. The Mining Law of 1872 commands that all public lands are "free and open to exploration" for minerals and "occupation" for such purpose.[6] The Federal Land Policy and Management Act ("FLPMA") reaffirms the unimpaired rights of locators and claims under the Mining Law of 1872, "including, but not limited to, rights of ingress and egress," except as specifically enumerated elsewhere in FLPMA.[7] FLMPA also mandates that BLM manage public lands for "multiple use," including and especially mining. Specifically, FLPMA makes it the policy of the United States to manage public lands "on the basis of multiple use and sustained yield"[8] and "in a manner which recognizes the Nation's need for domestic sources of

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[2] *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (quoting *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976)).
[3] *See* 5 U.S.C. § 553(b), (c).
[4] However, see discussion below of inconsistencies in mineral withdrawal maps and text in the section below.
[5] *See* The Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 2001.
[6] *See* 30 U.S.C. § 22 (commanding that all public lands are "free and open to exploration" for minerals and "occupation" for such purpose).
[7] 43 U.S.C. § 1732(b) (Clarifying that FLPMA does "amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress," except in limited express circumstances).
[8] FLPMA Section 102(a)(7), 43 U.S.C. § 1701(a)(7).

minerals . . . from public lands."[9] FLPMA defines "multiple use" to include "a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including . . . minerals."[10] FLPMA additionally designates "mineral exploration and production" as a "*principal* or major use" of public lands, along with domestic livestock grazing, fish and wildlife development and utilization, production, rights-of-way, outdoor recreation, and timber production,[11] and it directs that "public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals . . . from public lands."[12] In addition to FLPMA, multiple other statutes also emphasize that mineral development is a national priority. The Mining and Minerals Policy Act of 1970 ("MMPA") declares that "it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs . . . including all minerals and mineral fuels including oil, gas, coal, oil shale and uranium."[13] In addition, the National Materials and Minerals Policy, Research and Development Act of 1980 expressly directs the Secretary of Interior to act immediately to attain the goals set forth in the MMPA, and it calls for the Executive Office to promote goals of the MMPA within the various departments and agencies.[14]

Further, Montana's and the nation's environment and economies are better served by permitting responsible mineral development with appropriate environmental protections rather than sweepingly withdrawing minerals in a way that would result in stifling this country's shift to renewable energy and EVs, and/or would shift mineral production to other parts of the world with less stringent environmental regulations and make the United States reliant on other countries, leading to worse overall environmental, economic, and safety outcomes.

We applaud the BLM for not recommending new mineral withdrawals and removing previously proposed (but not yet finalized) withdrawals in the BLM's Preferred Alternative 5. As a general matter, this choice demonstrates consistency with the statutory mandates of the Mining Law of 1872, FLPMA, and other statutes, as well as the Biden Administration's goals for using domestically sourced materials in transitioning to domestically manufactured electric vehicles and renewable energy.[15] Nevertheless, MMA has concerns that the Preferred Alternative's proposed habitat designations and several aspects of their management—such as density and disturbance caps, buffers, mitigation, and rights-of-way management—could, if not amended, significantly restrict mineral development in a way that: (i) could harm state and local economies and the

[9] FLPMA Section 102(a)(12), 43 U.S.C. § 1701(a)(12).
[10] FLPMA Section 103(c), 43 U.S.C. § 1702(c).
[11] FLPMA Section 103(*l*), 43 U.S.C. § 1702(*l*).
[12] 43 U.S.C. § 1701(a)(12).
[13] 30 U.S.C § 21(a).
[14] *See generally* 30 U.S.C. §§ 1601–1605.
[15] *See On America's Supply Chains*, Executive Order 14017 (making it a presidential priority to "revitalize and rebuild domestic manufacturing" and "domestic production," and directs cabinet officials to develop policies to "sustainably reshor[e] supply chains," "develop[] domestic supplies," and encourage domestic "investment in critical goods and materials."); *see also* Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 2001 (providing incentivizes electric vehicle batteries and solar and wind projects made with domestic content or domestic supply chain).

aforementioned Biden Administration goals; (ii) is inconsistent with the statutory mandates of the Mining Law of 1872, FPLMA, the MMPA, and National Materials and Minerals Policy, Research and Development Act of 1980; and (iii) could even constitute impermissible defacto withdrawals. These concerns are detailed in the sections that follow.

In addition, there are inconsistencies between the maps and text that require clarification regarding mineral withdrawals for Alternative 5, as well as other alternatives. For example, the Draft RMPA/EIS summary table (Table 2-4) states that locatable minerals management under Alternative 5 would be the same as Alternative 4 in PHMA and the same as Alternative 1 in GHMA.[16] But the table is blank for locatable minerals in PHMA for Alternative 4 except for noting one area of Montana that is already withdrawn, and stating that the other types of HMA are the "same as PHMA."[17] The Draft EIS text later attempts to clarify this by stating, under the headline of "Alternatives 4 and 5," that "Alternative 4 … would not recommend any areas for withdrawal from mineral entry."[18] But then the Alternative 4, 5 and 6 maps further confuse the issue by showing "recommended withdrawals" in small areas of northeast Montana.[19] No narrative explanation in the Draft RMPA/EIS is given for these inconsistencies and information gaps.

Unfortunately, these inconsistencies are just a sampling of a laundry list of inconsistencies and data gaps throughout the Draft RMPA/EIS that make it impossible for the public to understand what is being proposed in each alternative and provide meaningful comments. A few more examples of inconsistencies include that the section on environmental consequences for locatable minerals states that all *PHMA* would be withdrawn under Alternative 3,[20] but the Montana-specific table states that all *Sagebrush Focal Areas* (*SFAs*) would be recommended for withdrawal in Alternative 3,[21] which is inconsistent with the rest of the Draft that states that Alternative 3 does not propose SFAs. There are yet more examples of inconsistencies and mistakes listed in this comment letter's discussions of mitigation, buffers, and ACECs. The BLM must resolve these and other inconsistencies and information gaps in a revised draft RMPA and supplemental draft EIS, along with a comprehensive revision and proofreading of the entire document and allow for another round of public comments.

3. HABITAT DESIGNATIONS IN ALTERNATIVES 4, 5, AND 6

The Draft RMPA/DEIS explains that the habitat designations in the BLM's Preferred Alternative 5, as well as in Alternatives 4 and 6, are intended to improve consistency with state habitat designations and scientific information and observations.[22] Alternative 5 would decrease total HMA acreage by 4.7% in Montana as compared to Alternative 1.[23] However, Alternative 5 shifts some GHMA to PHMA, resulting in just under 1% more PHMA in Alternative 5 over

[16] *See* Draft RMPA/EIS 2-16, 2-18, 2-164.
[17] *See* Draft RMPA/EIS 2-16, 2-164.
[18] *See* Draft RMPA/EIS 4-110
[19] *See* Draft RMPA/EIS App'x 1, Maps 2.35a, 2.36a, 2.37a.
[20] *See* Draft RMPA/EIS 4-109.
[21] *See* Draft RMPA/EIS 2-164,
[22] *See e.g.,* Draft RMPA/EIS App'x 3, 3-9.
[23] *See* Draft RMPA/EIS 2-12 (Table 2-3).

Alternative 1.[24] PHMA designation comes with restrictive management requirements that make development of important natural resources and associated infrastructure extremely difficult, if not impossible. In particular, PHMA designation restricts or eliminates the ability to reasonably develop new mining targets, depending on the resource type.

Special attention should be given to southwest Montana because of the high concentration of mineralization, particularly the presence of important and critical minerals. MMA is concerned that Alternative 5 would retain a significant amount of PHMA designation in southwest Montana in areas important for locatable minerals exploration and development. Development of minerals in this area of Montana is important for the economy of the State and local communities, as well as for the Biden Administration's goals for building more modern and sustainable infrastructure with domestic resources. Accordingly, retention of significant PHMA in southwest Montana—along with accompanying restrictive management requirements that stifle development of minerals and associated infrastructure—may hurt the state's economy, local jobs and local economies, as well as hinder the Biden Administration's goals for development of our nation's infrastructure. It could also end up shifting that development to areas and countries with less stringent environmental standards and make the United States even more reliant than it already is on foreign resources, leading to worse overall outcomes.

MMA is concerned that these local and national economic impacts of reduced mineral development have not been adequately analyzed in the Draft RMPA/EIS and therefore do not meet the requirements of NEPA. Accordingly, the BLM must conduct additional analysis in conjunction with state and local experts and stakeholders, and issue a revised Draft RMPA/EIS with the opportunity for more meaningful public comment.

4. DISTURBANCE CAPS & DENSITY CAPS

The Draft RMPA/EIS sets disturbance caps and density caps under all alternatives. MMA is concerned that BLM has not clearly enough stated that such caps do not and cannot apply to the exploration and development of locatable minerals. Further, while the Preferred Alternative does not propose to change the cap numbers, it does propose to make changes and/or retains aspects of the current caps that are problematic and would create a scenario where areas may be effectively closed to all kinds of other development because the caps will be exceeded more quickly. MMA is concerned that such caps may actually cause a response opposite to their intent—the caps may encourage development in undeveloped areas and may create a race to development in areas that have not yet hit the cap, which is bad public-land policy and bad for retaining Montana's overall rural character. Accordingly, BLM should issue a revised RMPA and supplemental EIS that addresses the following concerns.

A. BLM Must Clarify that Disturbance and Density Caps are Inapplicable to Locatable Mining Activities

The Draft RMPA does not adequately recognize the full extent of locatable mineral rights granted by the Mining Law of 1872 and FLPMA, and it exacerbates confusion about whether

[24] *See* Draft RMPA/EIS 2-12 (Table 2-3).

disturbance and density caps apply to locatable mineral activities—they cannot, and this needs to be clarified.

With respect to the *disturbance* caps, the 2015 RMPA states that even though "locatable mine sites are included in the degradation calculation [for the disturbance caps], mining activities under the 1872 mining law *may* not be subject to the … disturbance cap[s]".[25] The use of the term "may" inserts undue vagueness because it is open to multiple interpretations. As for the *density* caps, the 2015 ARMPAs opaquely state that application of the density caps is "subject to applicable laws and regulations, such as the 1872 Mining Law, valid existing rights, etc."[26] The Draft RMPA/EIS does not resolve these ambiguities. Instead, the Draft states that that disturbance cap is only applied "to the extent consistent with applicable law (such as the Mining law of 1872) and valid existing rights."),[27] and it does not speak at all to the applicability of the density caps. Rather than leaving readers to guess what it means to be "consistent with" the Mining Law and valid existing rights or whether the disturbance and density caps "may" or may not apply, the Draft RMPA should be amended to clearly state that neither the disturbance caps nor the density caps apply to any locatable mineral activities authorized by Mining Law of 1872, FLPMA, and BLM regulations at 43 C.F.R. Parts 3809, 3802, 3715, including development and operation of existing mining claims, exploration for and development of new claims, and all activities reasonably incident thereto.

This clarification is needed to comply with the General Mining Law's command that all public lands are "free and open to exploration" for minerals and "occupation" for such purpose.[28] This statutory command ensures both pre-discovery and post-discovery access, use, and occupancy rights to enter public lands for mineral exploration and development, and all uses and purposes reasonably incident thereto. FLPMA reaffirmed this position when it specified that it did not "amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress," except as specifically enumerated elsewhere in FLPMA.[29] Only if an area of public land is formally withdrawn under specific procedures—which do not include simply promulgating a RMP or land use plan—can it be closed to mineral location and development.[30]

The disturbance caps prohibit development once a certain (small) percentage of a certain area within PHMA or IHMA is disturbed—3% for habitat level assessment areas and 5% for project-level assessment areas in Montana. The density caps limit PHMA a project analysis area to 1 energy and mining facility per 640 acres.[31] Application of such disturbance and density caps

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[25] *See* 2015 RMPA for Southwest MT and Idaho, at E-5, E-22.
[26] *See* 2015 Idaho & Southwestern Montana ARMPA, 2-13, E-5, E-8.
[27] *See* Draft RMPA/EIS 2-29, 2-39 (stating that disturbance cap is only applied "to the extent consistent with applicable law (such as the Mining law of 1872) and valid existing rights.").
[28] *See* 30 U.S.C. § 22.
[29] 43 U.S.C. § 1732(b) ("Except as provided in section 1744 [recordation of mining claims], section 1782 [wilderness study areas], subsection (f) of section 1781 [California Desert Conservation Area] of this Act and the last sentence of this paragraph [prevention of "unnecessary or undue degradation"], no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of locators or claims under that Act, including, but not limited to rights of ingress and egress.").
[30] *See* 43 U.S.C. § 1714.
[31] *See* 2015 ARMPA for Idaho and Southwest MT, at 1-11, 2-13; *see also* 2015 ARMPA for Idaho and Southwest MT, at 2-13; *see also* Draft RMPA/EIS App'x 2, 2-BILLINGS-5, 2-HILINE-4, 2-LEWISTON-7.

to locatable mining exploration and development would be clearly contrary to the Mining Law and would constitute an impermissible *de facto* withdrawal.

Despite this well-settled legal position, BLM has not clearly stated that the disturbance and density caps do not apply to locatable mineral exploration and development activities, nor has it clearly stated where it intends to draw the line as to what constitutes mining activity that cannot be subject to a disturbance cap. Mining is dependent on a number of activities that may not be considered a "mine site" or may not be within a plan of operations but are nevertheless critical to the development and operation of mining under the General Mining Law. It may be the case that BLM intends to restrict supporting access and infrastructure necessary for exploration and mine site activity under these disturbance and density cap restrictions in violation of the General Mining Law. Lacking clarity on this point, BLM must revisit this issue for locatable mineral development to allow for transparency about how it intends to treat applications for locatable mineral development. Without further information on this issue, BLM is not meeting its obligations under NEPA to analyze the impacts of the Draft RMPA. To that end, the BLM should more clearly and definitively state in a revised RMPA/EIS that neither the disturbance caps nor the density caps apply to any locatable mineral activities authorized by Mining Law of 1872, FLPMA, and BLM regulations at 43 C.F.R. Parts 3809, 3802, 3715, including development and operation of existing mining claims, exploration for and development of new claims, and all activities reasonably incident thereto.

B. Assessment Areas (Denominator Calculations) for the Habitat-Scale Disturbance Cap

Although the Preferred Alternative (Alternative 5) does not change the cap percentages from existing plans, it does adjust the inputs to the calculations. At first glance, this may not appear to be a significant change. However, upon closer analysis, the shifting in Alternatives 3 through 6 to Habitat Assessment Framework (HAF) Fine Scale delineation areas for the habitat-level assessment for disturbance calculations instead of the existing Biologically Significant Units (BSU)[32] creates an unworkable scenario for future development of an array of resources that are important to the economies of the State and local communities and development of modern infrastructure with domestic materials.

The existing plan, reflected in Alternative 1, requires an analysis of disturbed sage-grouse habitat within a BSU, and the percentage of impacts may not be greater than 3%. These BSUs are large areas—for example, all of southwest Montana is currently one BSU under Alternative 1.[33] The newly proposed HAF fine scale areas in Alternative 5 (and Alternatives 3, 4, and 6) are significantly smaller subsets of BSU areas. Southwest Montana would move from 1 BSU to 2 HAF fine scale areas. This matters because, as the Draft RMPA/EIS acknowledges, "[t]he smaller size of most HAF fine-scale areas compared to BSU-scales might result in the cap being reached more quickly."[34] Having smaller denominators that lead to disturbance caps being hit sooner can actually encourage development in undeveloped areas that have not yet reached the cap or create a race for development in areas that are close to hitting the cap, both of which are bad public-lands policy and may hurt Montana's largely rural character. The Draft RMPA/EIS does not adequately analyze these negative economic impacts, nor does it sufficiently demonstrate why the science

[32] *See* Draft RMPA/EIS 2-29– 2-33.
[33] *See* 2015 Idaho & Southwestern Montana ARMPA, 2-12, E-1.
[34] *See* Draft RMPA/EIS 4-22.

dictates such a significant shift for the disturbance cap denominators, or other substantial reasons why this shift is necessary or warranted.

Further, under Alternatives 5 and 6, the habitat-level denominator would exclude areas of PHMA that are unsuitable for sage-grouse.[35] By contrast under Alternative 1, the habitat-level denominator in Montana includes *all* PHMA in a BSU (e.g., all PHMA in southwest Montana) regardless of habitat suitability. We are concerned that the removal of "unsuitable" habitat could decrease the denominator size even further and consequently lead to the cap being hit sooner in Alternative 5 as compared to Alternative 1 in Montana. This change also begs the question as to why an area would be designated as PHMA if it is not "suitable" habitat and correspondingly calls into question all habitat designations in the Draft. The BLM should work with state and local experts further on the habitat designations and disturbance cap calculation methods, and more thoroughly explain the changes and associated impacts should be in a supplemental draft RMPA and EIS so that stakeholders can fully understand the proposed impacts and provide meaningful commentary.

C. Assessment Areas (Denominator Calculations) for the Project-Scale Disturbance Cap

Not only has BLM inexplicably modified the denominator inputs for habitat-scale disturbance cap calculations, it has also changed the denominator approach for project-scale disturbance cap calculations, which creates confusion and complications for project planning. Under current management reflected in Alternative 1, the project-scale denominator constitutes all PHMA within a 4-mile buffer around the project's proposed disturbance area plus a 4-mile buffer around each affected active lek in PHMA.[36] By contrast, under Alternatives 3 through 6, the project-level cap denominator is all PHMA that is "used by" and "supports the GRSG population potentially affected by the proposed project," including seasonal habitats and transition zones between habitats, though the project-level denominator calculation methods from Alternative 1 may be used if insufficient information is available to "identify the portions of PHMA used by potentially affected local GRSG population."[37] While the current management structure is complex, it is comparatively more applicable than the proposed changes, which invites inconsistent interpretation. The BLM must provide more objective standards to guide implementation of the "used by" and "supports" language if it is going to apply these changes. These changes may also further shrink the denominator of these calculations, thereby creating scenarios where the cap is hit after minimal development activity. Lacking better justification for such a significant change, the BLM should revisit this decision in a supplemental draft RMP/EIS.

D. Wildfire and Urban Disturbances in Numerator Calculations for Project-Scale Disturbance Cap Should be Rejected

MMA is concerned that, in Montana, the project-scale disturbance calculations (the numerator) in Alternative 5 not only retain Alternative 1's inclusion of wildfire and agricultural disturbances, they also include subdivisions and urban disturbances.[38] Including and adding these

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[35] *See* Draft RMPA/EIS 2-32. Under Alt. 3 and 4, the HAF includes all areas of PHMA and IHMA regardless of habitat suitability. *See* Draft RMPA/EIS 2-34.

[36] *See* Draft RMPA/EIS 2-28, 2-29, 2-32 –2-33; *see also* 2015 Southwest MT and Idaho ARMPA, E-4–E-5, E-8, E-22.

[37] *See* Draft RMPA/EIS 2-32–2-33.

[38] *See* Draft RMPA/EIS 2-29. 2-30.

types of disturbances to the numerator will result in the cap being reached in Montana sooner than in other states, even with Montana's slightly higher project-level cap (5% versus 3%). Take, for instance, southwest Montana which is generally comprised of approximately 40% private lands and 60% federal lands divided between the BLM and the United States Forest Service. The vast majority of these private lands sustain livestock production, row crops, and hay cultivation. However, the HAFs, as currently drawn, include large swaths of lands outside of GHMA and PHMA that extend into lands near Whitehall, Butte, and west of Dillon that are experiencing subdivision. Future development on any BLM land in southwest Montana was already difficult given the disturbance cap calculation that must account for this complexion of agricultural usage across private lands, forested lands susceptible to and with a history of forest fires, and large volume of PHMA. Now, however, with the inclusion of subdivisions under Alternative 5, any future development becomes almost impossible. The test case of southwest Montana exemplifies why planning should not be done on a regionwide basis but considered within a local context where either the HAF should be redefined or the inclusion of numerator calculations, such as subdivisions, should be excluded.

For the same reasons, wildfire disturbance should not be included in the numerator calculations in Montana, regardless of the selected alternative.[39] Alternative 3's inclusion of wildfire in the disturbance calculations in all states should be rejected.

E. Exceptions to Disturbance Caps

MMA supports that Alternatives 4 through 6 allow exceptions to the project-scale disturbance cap, which may be granted by the Authorized Officer and State Director if certain conditions are met (e.g., avoidance, minimization, compensatory mitigation).[40]

However, BLM inexplicably states that no similar exceptions would be permitted for the HAF fine scale disturbance cap under Alternatives 4 through 6 unless necessary to protect human safety.[41] This disparate treatment between the exceptions allowed for the two different types of caps needs better explanation in the Draft RMP/EIS. This is especially true where such caps rely on such a site-specific analysis of disturbance. Not all disturbance is created equally, and exceptions may be warranted depending on project life scales, proximity to full reclamation, and other issues that may not even be on the horizon. Exceptions to the caps should be permitted at both scales for responsible development, conditional upon meeting the requirements for avoidance, minimization, compensatory mitigation, buffer, and other best management practices as applicable.

F. Cap Levels and Current Conditions

The Draft RMPA/EIS swiftly dismisses concerns about the disturbance caps by stating that the "percentage of disturbance in PHMA/IHMA within fine scale HAF boundaries is well below 3% and below 1% in most areas."[42] This statement glosses over the fact that there may be some areas of developmental importance that are at or near the cap, and that even in areas "well below" the cap, it would not take much disturbance to reach the cap because the denominator is shrinking

[39] *See* Draft RMPA/EIS 2-30.
[40] *See* Draft RMPA/EIS 2-34–2-38.
[41] *See* Draft RMPA/EIS 2-34–2-39.
[42] *See* Draft RMPA/EIS 4-22.

and the cap is set at such a low percentage. More details, discussion, and data on the current status of the disturbance and density caps throughout the planning area should be included in a revised Draft RMPA/EIS with additional opportunity for public comment. Perhaps the lack of analysis on this is simply due to the scale of the rangewide approach. With a more specific state-by-state planning effort, more analysis of current conditions would be possible. Without more specifics on the current conditions of the cap percentage potential exceedance, the Draft RMPA/EIS does not comport with NEPA's "hard look" requirements or the APA's notice and comment requirements because it is impossible for stakeholders to fully understand and provide meaningful comments on the impacts of the cap changes being proposed.

G. Density Caps

The BLM currently imposes "density caps" of 1 energy or mining facility per 640 acres in PHMA in a project analysis area in Montana, as reflected in Alternative 1.[43] It is unclear whether the Montana density caps are proposed to be retained under Alternatives 3 through 6, as the Draft RMPA vaguely states that there are "potential change[s] under Alternatives 3, 4, 5, and 6," for both the disturbance and density caps.[44] MMA opposes retention of these density caps for a number of reasons. First, density caps (like disturbance caps) can actually encourage development in undeveloped areas that have not yet hit the cap. Second, disturbance caps pit different types of uses against one another—renewable energy, utilities, various types of mining—and will create a race to development, which is bad policy when it comes to public lands. Third, density caps create practical implementation challenges, including but not limited to a lack of clarity as to what constitutes a "facility" under these caps. Fourth, adoption of density caps in the 2015 ARMPA was based on guidance in a 2011 report produced by the GRSG National Technical Team (the NTT Report).[45] Not only is this report 13 years old, it makes one-size-fits all, landscape-scale recommendations that are not necessarily rooted in locally applicable science or local needs. Accordingly, the NTT Report has been criticized by many stakeholders throughout this planning process and should not continue to serve as the sole or primary basis for rationalizing the density and disturbance caps.[46] Accordingly, BLM should issue a revised RMPA/EIS that either provides clearer guidance about how to implement these density caps and additionally specifies that such caps do not apply to locatable minerals activities (as discussed above) or, preferably, removes the density caps in all states in the final preferred alternative.

5. CLOSURE OF SALABLE MINERALS AND NON-ENERGY LEASABLE MINERALS

MMA is concerned that the BLM's Preferred Alternative would retain the restrictions currently in place under Alternative 1 for saleable minerals and non-energy leasable minerals. Specifically, Alternatives 1 and 5, (and well as 4 and 6) close all PHMA to salable mineral development except for free use permits and expansion of existing leases in all offices except the Lewiston Field, which is open. (GHMA and RHMA are open for salable minerals in all Field

[43] *See* 2015 ARMPA for Idaho and Southwest MT, at 1-11, 2-13; *see also* 2015 ARMPA for Idaho and Southwest MT, at 2-13; *see also* Draft RMPA/EIS App'x 2, 2-BILLINGS-5, 2-HILINE-4, 2-LEWISTON-7.
[44] *See* Draft RMPA/EIS App'x 2, 2-BILLINGS-5, 2-HILINE-4, 2-LEWISTON-7.
[45] *See* 2015 ARMPA for Idaho and Southwest Montana, at 1-22.
[46] *See, e.g.,* Scoping Comment Letter from American Exploration & Mining Association (Feb. 8, 2022) (Submission ID SCP-1-500204359); Scoping Comment Letter from National Mining Association (Feb. 8, 2022) (Submission ID SCP-1-500204346);

Offices under Alternatives 1, 4, 5, 6, subject to RDFs.[47]). Similarly, Alternatives 1, 4, 5, and 6 make PHMA closed for new leases for non-energy minerals, but open in GHMA subject to RDFs.[48] Alternative 3 would sweepingly close PHMAs, RHMAs, and GHMAs to new saleable minerals/mineral materials permits[49] and nonenergy minerals leasing.[50] MMA is concerned that entirely closing such large swaths of land to mineral development will hurt the economies of the State and local communities and is unduly restrictive. The BLM should examine in more depth the potential for managing all HMAs with best management practices, rather than imposing sweeping, outright closures.

6. **COMPENSATORY MITIGATION**

MMA agrees with BLM's position in the Draft RMPA/EIS that compensatory mitigation for locatable mineral mining activities under the 1872 Mining Law is not and cannot be mandated by the BLM.[51] Other types of infrastructure and development, however, are impacted by the mitigation requirements. The Preferred Alternative would make changes to the mitigation requirement that in some ways may help development of important infrastructure, while in other ways may impose troubling roadblocks, literally and figuratively.

Specifically, the State welcomes the shift in the mitigation standard in Alternative 5 to "no net habitat loss."[52] The current management approach to mitigation reflected in Alternative 1—requiring "net conservation gain"[53]—is overly punitive to development and chills investment in American resources—contrary to the Biden Administration's goals for enhanced development of American resources as articulated herein.

We also support BLM's position in Alternative 5 that the mitigation required to offset development impacts does not need to be in place and functioning prior to engaging in the new disturbance.[54] However, BLM has also included contradictory and inconsistent statements with respect to mitigation timing. Specifically, the mitigation summary table in the Draft RMPA/EIS (Table 2-5) states that compensatory mitigation must be completed prior to initiating the activity causing the need for compensation, and this statement appears to apply to Alternatives 3 through 6.[55] But the disturbance cap summary table (Table 2-7) states that mitigation under Alternatives 5 and 6 would not need to be functioning prior to the new disturbance.[56] This

[47] *See* DEIS 2-164. It's unclear from the text whether the Lewiston office would remain open in PHMA for saleable minerals. This inconsistency requires clarification. It is also unclear whether Alt. 3–6 would remove blanket buffers and would instead apply a project-by-project determination. *See* DEIS 2-159 (stating that while Alt. 1 and 2 " apply the lek buffer-distances identified in the United States geological Survey (USGS) Report," under Alt. 3–6 the BLM "will apply applicable BMPs, design features, and COAs … as needed and demonstrated through project analysis." This needs clarification.
[48] *See* DEIS 2-163.
[49] *See* DEIS 2-14, 2-164.
[50] *See* DEIS 2-163.
[51] "Compensatory mitigation is not required by the BLM for operations conducted under the Mining Law of 1872." *See* Draft RMPA/EIS 2-23–2-24.
[52] *See* Draft RMPA/EIS 2-22.
[53] *See* Draft RMPA/EIS 2-23.
[54] But in such case, the amount of compensatory mitigation required may be greater to account for uncertainty of effectiveness. *See* Draft RMPA/EIS 2-34–2-36.
[55] *See* Draft RMPA/EIS 2-22.
[56] *See* Draft RMPA/EIS 2-34–2-36.

inconsistency should be resolved in a revised or supplemental draft RMPA and EIS to clarify that compensatory mitigation under Alternative 5 need not be in place ahead of the disturbance, so long as certain conditions are met.

Contributing further to the uncertainty and difficulty of implementing revised compensatory mitigation requirements, Alternatives 3 through 6 require mitigation to be "prioritized to occur within the same area of impact (within the same HAF fine scale area…), or if not possible, within the same neighborhood cluster … to the extent practicable or nearest equivalent HMA designated habitat."[57] Case-by-case circumstances may make this standard impossible to achieve and could limit the efficacy of mitigation. Land for mitigation may not be available in the same vicinity, or available nearby land may not provide the same quality of mitigation project as somewhere further away. As drafted, there is too much uncertainty as to when local mitigation would be deemed "not possible" or not "practicable," and when farther-away mitigation may be permitted. Additional flexibility must be more expressly built into a revised draft RMPA/EIS.

7. OVERLY RESTRICTIVE RIGHTS-OF-WAY IN MONTANA'S ALTERNATIVE 5

Alternative 5 would be more restrictive in Montana than Alternative 1 for both major and minor rights-of-way (ROWs) when near active leks and in crucial winter ranges. Specifically, under Alternative 5, major and minor ROWs are *excluded* in PHMA within 0.6 miles of active leks and crucial winter range when outside of designated corridors, while the remainder of PHMA is an "avoidance" area for ROWs. This is more restrictive than under Alternative 1 in Montana, where PHMA in the Dillon Field office is *open* to ROWs with required design features ("RDFs") and buffers, and PHMAs in other Field Offices are "avoidance" for ROWs.[58] This is also more restrictive than in other states under Alternatives 5, where PHMA would be "avoidance" for minor ROWs and "avoidance" for even major ROWs, subject to "micro-siting" requirements to avoid siting near active leks and connectivity corridors.[59] The Draft RMPA/EIS fails to justify why ROW restrictions should be more restrictive in Montana than in other states. Accordingly, these overly restrictive ROW provisions in Montana should be changed to be the more flexible standards of other states.

8. LEK BUFFERS

Under Alternative 1 of the Draft RMPA/EIS, which reflects current management, the BLM applies lek buffers in all types of HMAs (meaning that certain types of infrastructure are not allowed within certain distances of leks). This applies to development for industries such as salable minerals and nonenergy leasable minerals,[60] fluid minerals,[61] and renewable energy development.[62] This also applies to development with varied distances to leks depending on whether the development is a "linear feature," "infrastructure related to energy development," "tall

[57] *See* Draft RMPA/EIS 2-23; *see also id.* 2-22.
[58] *See* Draft RMPA/EIS 2-161.
[59] *See* DEIS 2-96–2-98.
[60] *See* 2015 Idaho and Southwest MT ARMPA, 2-29 (MD MR 11, MD MR 14)
[61] *See* 2015 Idaho and Southwest MT ARMPA, 2-29 (MD MR 11, MD MR 14)
[62] *See* 2015 Idaho and Southwest MT ARMPA, 2-30 (MD RE 1)

structures" like communication and transmission towers and lines, fences, rangeland structures, other surface disturbances, and other noise and related disruptive activities.[63]

MMA is concerned that the lek buffer distances currently employed by the BLM contain inconsistencies with those of the State of Montana for state lands, yet nevertheless are not proposed to be updated in the Draft RMPA/EIS. MMA is additionally concerned that the Draft RMPA/EIS appears to be changing the definition of "lek" to which a buffer would apply in all in a way that would likely result in more leks falling within the buffers' realms. Specifically, Appendix 4 broadly states that "the BLM is adopting the lek definitions developed by WAFWA to ensure consistency across the RMPs."[64] This new definition would apply buffers to both "active" leks and "*pending* active" leks, and would extend measuring active or occupied status to a 10-year scale.[65] The Draft RMPA/EIS recognizes that changes may lead to more leks being subject to the buffer in *Idaho* but fails to analyze the impacts in other states (or otherwise clarify that these changes are inapplicable in other states, if that is the intent)."[66] Any proposed changes to lek definitions and lek buffers should be analyzed for consistency with state rules and such analysis should be explained in a supplemental draft RMPA/EIS.

Additionally, the BLM should clarify that buffers and other similar NSO provisions do not apply to activities permitted under the Mining Law of 1872—to preclude locatable mining activities for miles (or fractions thereof) around sage-grouse leks would constitute a *de facto* mineral withdrawal outside of permissible withdrawal procedures.

9. ALTERNATIVE 3 OPPOSITION

MMA strongly opposes Alternative 3 and are pleased it is not the BLM's preferred alternative. Alternative 3 is so extreme it should never have been included in the range of alternatives analyzed by the BLM for the following reasons.

A. Locatable Minerals Withdrawals under Alternative 3

Alternative 3 would recommend that *all* designated sage grouse Habitat Management Areas ("HMAs") in all states within the planning area be recommended for withdrawal from mineral entry under the Mining Law of 1872.[67] This would result in large areas of the 10-state planning area being withdrawn from mineral exploration and development including but not limited most areas of southwest Montana that are important exploration targets and areas of current development for minerals such as gold, silver, copper, lithium, and a cadre of critical minerals that are located in few other locations, all of which are important to modern construction and modern technologies and key to the Biden Administration's goals for transitioning to electric vehicles and

[63] *See* 2015 Idaho and Southwest MT ARMPA, G-4–G-5.
[64] See Draft RMPA/EIS, App'x 4, 4-1.
A "pending active" lek is a lek with just 1 observation of at least 2 males in the last 10 years and at least one observation of at least two males more than 10 years ago.
[65] *See* Draft RMPA/EIS, App'x 4, 4-8–4-9.
[66] *See* Draft RMPA/EIS 4-26; *see also id.* 4-30.
[67] *See* Draft RMPA/EIS 2-16, 4-109; *see also* Draft RMPA/EIS App'x 1, Map 2.34a.

renewable energy with domestically sourced materials and increasing domestic investments in critical materials for revitalizing domestic manufacturing.[68]

The Draft RMPA/EIS also contains what we believe to be an unfortunate typo with respect to Alternative 3's minerals management—it states: "Under Alternative 3, all PHMA would be managed as ACECs."[69] This sentence was likely written backwards in error, and the intent was that all ACECs would be managed as PHMA. But as written, if all PHMA (which is all HMAs under Alternative 3) were managed as ACECs, that would mean that prior to the recommended mineral withdrawals taking effect, no notice-level mineral exploration would be permitted because BLM regulations require an approved plan of operations for anything more than "casual" use in any designated ACEC.[70] While this was likely a drafting error, and Alternative 3 is not the "Preferred Alternative," BLM should still correct the error. If the sentence was not an error, the agency's analysis of Alternative 3 is extremely deficient. We additionally note that this drafting error is emblematic of a series of typos, inconsistencies, and information gaps that should preclude the Draft RMPA/EIS from moving forward without a revised draft and supplemental EIS and additional opportunity for public comment.

B. Closure of Other Natural Resources and Supporting Infrastructure under Alternative 3

Not only would Alternative 3 withdraw all HMAs from mineral location, it would also manage all HMA as PHMA, which would increase the acreage of PHMA by 160% in Montana as compared to Alternative 1.[71] Such a large expansion in PHMA, given associated restrictions such as disturbance cap calculations, would effectively limit the ability for multiple use on an unreasonably large amount of public lands. The effect on mining development, exploration, and expansion of existing operations could be catastrophic given the level of restrictions associated with PHMA.

Further, Alternative 3 would close all HMAs (except Connectivity Habitat Management Areas in Montana) to new saleable minerals permits,[72] nonenergy minerals leasing,[73] and livestock grazing.[74] Alternative 3 would also exclude all major and minor rights-of-way in all HMAs outside of designated utility corridors.[75] In effect, Alternative 3 would close all sage-grouse habitat—large swaths of 10 states—to any new development of natural resources, energy and

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[68] *See On America's Supply Chains*, Executive Order 14017 (making it a presidential priority to "revitalize and rebuild domestic manufacturing" and "domestic production," and directing cabinet officials to develop policies to "sustainably reshor[e] supply chains," "develop[] domestic supplies," and encourage domestic "investment in critical goods and materials."); *see also* Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 2001 (providing incentives for electric vehicle batteries and solar and wind projects made with domestic content or domestic supply chain).

[69] *See* Draft RMPA/EIS 4-25.

[70] *See* 43 C.F.R. § 3809.11(c)(3).

[71] *See* Draft RMPA/EIS 2-12 (Table 2-3).

[72] *See* Draft RMPA/EIS 2-2, 2-14, 2-164. However, the Idaho-specific summary table states that saleable minerals management under Alternative 3 is the "Same as Alternative 1. All HMA is PHMA," which would mean that HMAs are still open for free use permits and expansion of existing pits subject to the disturbance cap, RDFs, and BMPs. *See* Draft RMPA/EIS 2-151. This inconsistency needs to be clarified in a revised draft RMPA and supplemental draft EIS.

[73] *See* Draft RMPA/EIS 2-14, 2-163.

[74] *See* Draft RMPA/EIS 2-104.

[75] *See* Draft RMPA/EIS 2-96–2-98, 2-161.

utility infrastructure, and livestock grazing. Such result is untenable with sustaining a modern economy.

C. ACECs under Alternatives 3 and 6

MMA opposes the designation of ACECs under both Alternatives 3 and 6, regardless of whether they would be proposed for mineral withdrawal. MMA is pleased that Alternatives 3 and 6 would designate a smaller area of Montana as ACECs as compared to other states in the planning area. Nevertheless, any ACEC designations that are proposed would suppress locatable mineral exploration even without a withdrawal because BLM regulations require a plan of operations for any locatable mineral activities in an ACEC other than "casual" use—no notice-level exploration is allowed.[76] We note that notice-level exploration does not mean that more lenient environmental standards apply; it simply means that compliant exploration may proceed without obtaining a plan of operations, which is a lengthy and expensive process. Requiring BLM approval of a plan of operations imposes a significant burden on mineral development and increased workload on understaffed BLM field offices that are already significantly behind on project approvals. Moreover, allowing notice-level exploration encourages mining companies to engage in less-invasive exploration efforts because they can more easily justify dismissing development in areas that its notice-level exploration shows is lacking in commercial mineral potential. By contrast, requiring a plan of operations demands more significant investments of time and money, including a NEPA review; and, once those costs have been sunk, mining companies have a greater incentive to conduct more invasive exploration work in an attempt to recoup that investment than otherwise could have been avoided if notice-level mining were permitted.

D. Alternative 3's Inconsistency with Statutory Mandates and Biden Administration Goals

Alternative 3's widespread and indiscriminate mineral withdrawals and closure of natural resources development and supporting infrastructure stymie the goals of President Biden's Executive Order 14017 and the Inflation Reduction Act that promote using domestically sourced materials in transitioning to domestically manufactured electric vehicles and renewable energy.[77] Alternative 3 also conflicts with multiple other statutory mandates, including FLPMA's multiple-use mandate[78] and the prioritization of domestic mineral development in FLPMA, the MMPA, and the National Materials and Minerals Policy, Research and Development Act of 1980."[79] It is difficult to see how these executive goals and statutes prioritizing mineral development

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[76] *See* 43 C.F.R. § 3809.11(c)(3).

[77] *See On America's Supply Chains*, Executive Order 14017 (making it a presidential priority to "revitalize and rebuild domestic manufacturing" and "domestic production," and directing cabinet officials to develop policies to "sustainably reshor[e] supply chains," "develop[] domestic supplies," and encourage domestic "investment in critical goods and materials."); *see also* Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 2001 (providing incentives for electric vehicle batteries and solar and wind projects made with domestic content or domestic supply chain).

[78] FLPMA Section 103(*l*), 43 U.S.C. § 1702(*l*) (designating "mineral exploration and production" as a "*principal* or major use" of public lands); *see also* 43 U.S.C. § 1701(a)(12) (directing that "public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals . . . from public lands).

[79] 30 U.S.C § 21(a) (Mining and Minerals Policy Act of 1970) and 30 U.S.C. §§ 1601–1605 National Materials and Minerals Policy, Research and Development Act of 1980 (together direct the Secretary of the Interior to "foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, [and] (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs").

nationwide—especially on public lands—can be reconciled with Alternative 3's effective closure of all natural resources and supporting development in a majority of this country's mineral-rich states.

The restrictions in Alternative 3 are so contrary to the goals of the Biden Administration, so harmful to state and local economies, and so in conflict with the reasonable interpretation of BLM's governing statutes, that it should never have been included as an alternative for evaluation under NEPA. Lacking a reasonable basis for inclusion of Alternative 3, BLM should not give any further consideration to it and should prepare a defensible EIS for public consideration with reasonable alternatives.

CONCLUSION

MMA appreciates the opportunity to comment on this Draft RMPA/EIS. As discussed above, however, several aspects of the proposed plan amendments, its alternatives, and its impacts-analysis need refinement. MMA strongly urges BLM to withdraw the document and revisit its planning on a state-by-state or region-by-region basis to ensure local input is fully considered, data from on-the-ground users are evaluated, and the public has a full and clear opportunity to consider an accurate and complete environmental analysis.

Matt Vincent, Executive Director
Montana Mining Association

June 13, 2024

Quincy Bahr, Sage-grouse Project Manager
Pat Deibert, Sage-grouse Conservation Coordinator
Bureau of Land Management
440 W. 200 S.
Suite 500
Salt Lake City, Utah 84101

RE: Comments on Greater Sage-Grouse Draft Resource Management Plan Amendment and Environmental Impact Statement (DOI-BLM-WO-2300-2022-0001-RMP-EIS)

Dear Bureau of Land Management,

Please accept these comments on behalf of the Nevada Wildlife Federation. We thank the Bureau of Land Management (BLM) for initiating this planning process to conserve the greater sage-grouse (GRSG) across its range. On behalf of our supporters, we share the goal of this creating resource management plan amendments (RMPAs) and records of decision (RODs) for GRSG conservation. Throughout the west, including in Nevada, GRSG populations have been in sharp decline. It is our sincere hope that this planning process will result in durable GRSG habitat management plans that can be successfully implemented over time and will not result in additional plan revisions in the near term.

Summary

Nevada's sagebrush ecosystem and GRSG are declining at an alarming rate. Historically, GRSG were so numerous that they once blotched out the sky. Most of our sagebrush ecosystem in Nevada resides on public lands, with the majority on BLM managed land. Balancing the multiple use mission while coordinating GRSG conservation efforts within the state is a tall task. We applaud the BLM for tackling this important mission. Like BLM's adaptative management approach to wildlife conservation, we recommend the BLM take a similar tactic by adopting a variety of management approaches from across the alternatives offered instead of holistically using your preferred alternative 5 plan. We also recommend additional changes and improvements to ensure that the BLM's GRSG management reflects the best available science. We request that the agency:

- **Conserve GRSG habitat to reverse ongoing population declines.** Management plans should be achievable, consistent, and durable. Management should conserve intact landscapes and functioning sagebrush ecosystems, and support populations of GRSG sufficient to help avoid any listing under the Endangered Species Act of 1973 (ESA).
- **Use the best available science to identify and protect important GRSG habitat as priority habitat management areas (PHMA) and provide a higher level of protection for the "best of the best."** This approach will best allow the BLM to fulfill its multiple-use

mandate, locating GRSG conservation actions where they will be most effective and authorizing other land allocations where they least conflict with GRSG conservation.

- **Manage mineral development to avoid and minimize impacts to GRSG.** Currently, the most prevalent land allocations on BLM-managed lands that are incompatible with GRSG persistency are mineral development, including oil and gas, other fluid, and solid minerals. Areas of lesser importance for GRSG should be prioritized for these uses and important GRSG habitat should be subject to closures, stipulations, and withdrawals, as appropriate.
- **Exclude renewable energy infrastructure from important GRSG habitat.** The impacts of renewable energy on GRSG are significant, and current projections indicate that there is more than sufficient land available for renewable energy development outside of high-quality GRSG habitat. The BLM should exclude renewable energy developments from PHMA and avoid impacts to important GRSG habitat within general habitat management areas (GHMA).
- **Manage wild horses and burros to limit impacts on GRSG.** When wild horse populations exceed appropriate management levels (AMLs), GRSG populations suffer. The BLM must manage wild horses and burros within their AMLs.
- **Manage livestock grazing to conserve GRSG.** Unlike most other competing land allocations, livestock grazing can be consistent with GRSG population health, and can even improve habitat conditions for GRSG. To achieve this, the BLM must manage grazing to meet land health standards (LHS) and must consider specific circumstances unique to each location.

Each of these issues are addressed in detail below.

Principles for GRSG conservation.

Address the continued GRSG declines through a strong management strategy.

The GRSG has sustained consistent and dramatic population losses over the last 60 years. Range-wide, the population has declined 80% since 1965, and 37% just since 2002.[1] Even since adoption of the BLM's GRSG management plans in 2015, population declines have continued.[2]

This is deeply concerning because the goal of the BLM's 2015 planning process was to "conserve, enhance, and restore GRSG habitat across the species' remaining range. . . and to provide greater certainty that BLM resource management plan decisions in GRSG habitat . . . can

[1] Peter S. Coates, Brian G. Prochazka, Michael S. O'Donnell, Cameron L. Aldridge, David R. Edmunds, Adrian P. Monroe, Mark A. Ricca, Gregory T. Wann, Steve E. Hanser, Lief A. Wiechman, and Michael P. Chenaille, Range-wide Greater Sage-Grouse Hierarchical Monitoring Framework: Implications for Defining Population Boundaries, Trend Estimation, and a Targeted Annual Warning System, U.S. Geological Survey Open-File Report 2020-1154, https://doi.org/10.3133/ofr20201154, https://pubs.usgs.gov/of/2020/1154/ofr20201154.pdf.

[2] B. G. Prochazka, P. S. Coates, C. L. Aldridge, M. S. O'Donnell, D. R. Edmunds, A. P. Monroe, Se. E. Hanser, L. A. Wiechman, and M. P. Chenaille, Range-wide population trend analysis for greater sage-grouse (Centrocercus urophasianus)—Updated 1960–2023, U.S. Geological Survey Data Report 1190, 2024, https://doi.org/10.3133/dr1190, https://pubs.usgs.gov/dr/1190/dr1190.pdf.

lead to conservation of the GRSG and other sagebrush-steppe-associated species in the region."[3] In 2010, the U.S. Fish and Wildlife Service (FWS) determined that the GRSG warranted listed under the ESA, in part due to a lack of regulatory mechanisms protecting the species. As part of its listing determination, the FWS noted that the BLM managed over 50% of the remaining GRSG range and suggested numerous opportunities for the BLM to adopt regulatory and other land-use practices to conserve GRSG on BLM-managed lands.[4]

The BLM 2015 GRSG plan was a strong plan that was never given the chance to be fully implemented. We encourage the BLM to use the 2015 GRSG plans as a foundation to your current draft. However, the new science and research that has been created since 2015 regarding the recovering of GRSG needs to be included.

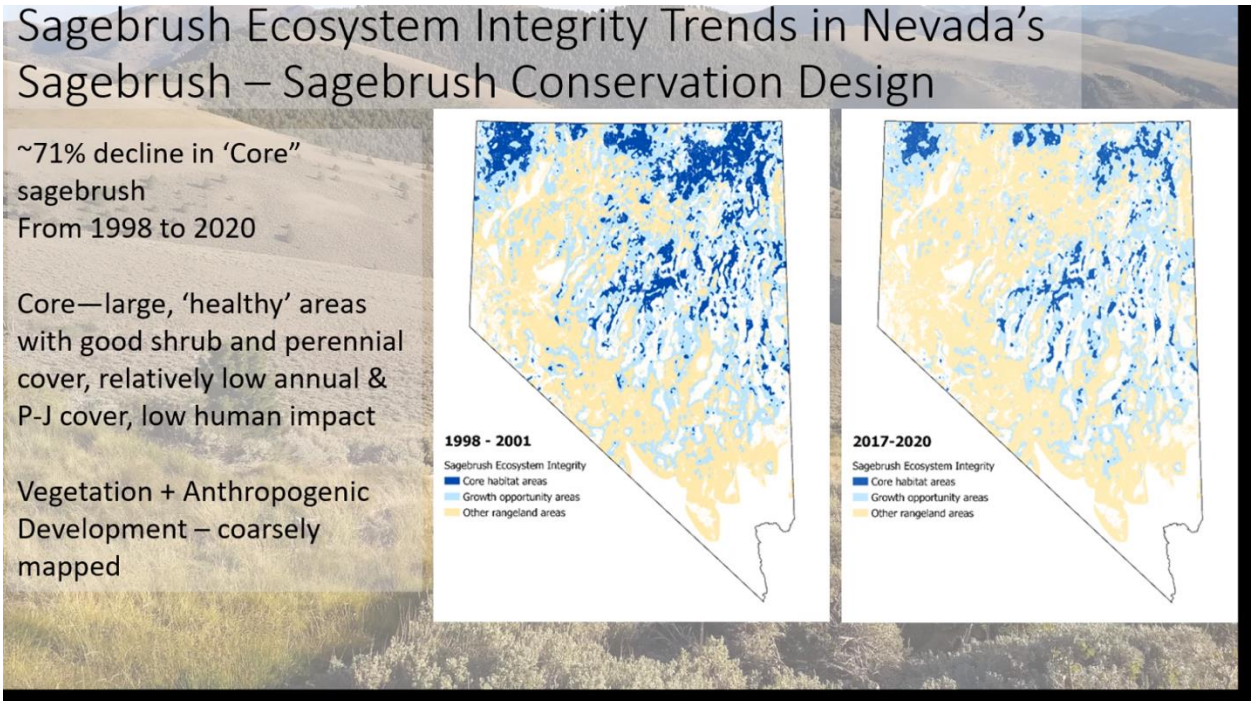
Protect and expand intact landscapes.

GRSG, as well as approximately 350 other species utilize the unique sagebrush ecosystem of the American West. Throughout the West, we are losing we are losing 1.3 million acres of functioning sagebrush habitat every year.[5] Since 1998, Nevada has lost 71% of its "prime" sagebrush habitat (map below).

[3] E.g. Bureau of Land Management, ROD and ARMPAs/ARMPs for the Rocky Mountain GRSG Sub-Regions, September 2015, S-2, https://eplanning.blm.gov/public_projects/lup/68346/88888/106396/HiLine_District_ROD.pdf.

[4] 12-Month Findings for Petitions to List the Greater Sage-Grouse (Centrocercus urophasianus) as Threatened or Endangered, 75 Fed. Reg. 13975 (March 23, 2010).

[5] Kevin Doherty, David M. Theobald, John B. Bradford, Lief A. Wiechman, Geoffrey Bedrosian, Chad S. Boyd, Matthew Cahill, Peter S. Coates, Megan K. Creutzburg, Michele R. Crist, et al., A Sagebrush Conservation Design to Proactively Restore America's Sagebrush Biome, Open-File Report 2022–1081, U.S. Geological Survey, 2022, https://pubs.usgs.gov/of/2022/1081/ofr20221081.pdf.


Sagebrush Ecosystem Integrity Trends in Nevada's Sagebrush – Sagebrush Conservation Design
~71% decline in 'Core" sagebrush
From 1998 to 2020
Core—large, 'healthy' areas with good shrub and perennial cover, relatively low annual & P-J cover, low human impact
Vegetation + Anthropogenic Development – coarsely mapped
1998 - 2001
Sagebrush Ecosystem Integrity
Core habitat areas
Growth opportunity areas
Other rangeland areas
2017-2020
Sagebrush Ecosystem Integrity
Core habitat areas
Growth opportunity areas
Other rangeland areas

While individual GRSG populations and management actions are important, we need to shift to a sagebrush biome focus that will more effectively address threats facing the entire ecosystem and the species the rely on it, including not only GRSG but also the 390 other species. The primary goal of this planning process should be to manage BLM lands for intact landscapes for GRSG across the range. Moreover, landscape fragmentation because of development and degradation allows for the spread of invasive annual grasses, which in turn alter fire cycles, and have led to staggering loss of GRSG habitat across the range.

There are numerous tools available to focus sagebrush conservation efforts on ecosystem function, including Threat-based Land Management[6] and the Defend the Core Framework.[7] Agencies, nonprofits, and state governments have all embraced these tools, and we urge the BLM to work in collaboration with them towards limiting and removing anthropogenic infrastructure to the maximum extent practical, restoring high quality, functional habitats, and defending against the spread of invasives to these areas. The Nevada Department of Wildlife has created a habitat land health map its sagebrush ecosystem that needs to be referenced when determining GRSG management plans in Nevada.

In addition to the SCD framework, other criteria that the BLM should consider for identifying the best intact landscapes for GRSG include locations where high breeding densities of GRSG occur; where a preponderance of current federal ownership or adjacent state-owned land or protected areas serve to anchor conservation importance; and where distance from existing

[6] D. Johnson, et al., *Threat-Based Land Management in the Northern Great Basin: A Manager's Guide* (Corvallis, Oregon: Oregon State University Press, 2019), https://catalog.extension.oregonstate.edu/pnw722.
[7] Jeremy D. Maestas, Mark Porter, Matt Cahill, and Dirac Twidwell, *Defend the core: Maintaining intact rangelands by reducing vulnerability to invasive annual grasses, Rangelands*, 44(3) (2022): 181-186, https://doi.org/10.1016/j.rala.2021.12.008.

development and infrastructure can be maximized. This can be achieved by properly identifying and protecting PHMA and also high-value "best of the best" areas that are truly irreplaceable, as are described more fully in section III.C of these comments.

Common sources of GRSG habitat destruction in Nevada include various types of mining (solid mineral development), renewable energy facilities, rights-of-way (ROWs) associated with the above such as pipelines and transmission lines, overutilization of rangelands by both domestic livestock and wild horses and burros, invasive grasses and woody species, and rangeland fire. All of these can further fragment habitat not directly impacted, including by reducing habitat connectivity, reducing opportunities for habitat and population expansion, and by creating landscape features such as tall structures that GRSG avoid at a distance.[8]

Of particular concern are non-anthropogenic impacts to GRSG, including invasive species and altered fire regimes. In many cases, however, these are functionally second-order (indirect) anthropogenic impacts because development activities alter landscapes and introduce landscape features such as linear ROWs or disturbed ground that enable these processes. Accordingly, proper land management approaches can reduce the threat posed by fire and invasives and help maintain intact landscapes.

Doing so would yield measurable benefits for GRSG. For example, in the Great Basin, 20.6% of GRSG PHMA have burned since 2000.[9] Hotter and drier conditions, combined with human-ignited fires, have increased the length of the fire season by 134 percent for this region,[10] and this trend shows no sign of slowing.

One of the major drivers of increased wildfires in Nevada is a fire-invasive cycle characterized by grasses such as cheatgrass, red brome and medusa head. These fast-growing and fast-burning species become established in disturbed areas that lack slower growing, more resilient native species, and outcompete native species while degrading soil and water quality. Habitat fragmentation due to development and associated infrastructure can create vectors for invasive species spread as well as anthropogenic wildfire ignition sources, exacerbating this threat. The problems of fire and invasive species are best addressed through a preventative approach, i.e. maintaining intact landscapes and native vegetation. Current estimates indicate most invasive plant-management programs address less than 10 percent of the average annual rate of spread of invasive plants,[11] so the BLM and other partners should increase their investment in this area.

[8] For instance, tall features such as transmission lines have been documented to cause avoidance behavior at a minimum of 4 miles, and perhaps farther. E.g. D. J. Manier, Z. H. Bowen, M. L. Brooks, M. L. Casazza, P. S. Coates, P. A. Deibert, S. S. Hanser, and D. H. Johnson, Conservation Buffer Distance Estimates for Greater Sage-Grouse—A Review, U.S. Geological Survey Open-File Report 2014-1239 (2014), https://doi.org/10.3133/ofr20141239; Naugle et al., "Sage-Grouse and Cumulative Impacts of Energy Development." See also further discussion in section VI below.

[9] See T. E. Remington, P. A. Deibert, S. E. Hanser, D. M. Davis, L. A. Robb, and J. L. Welty, Sagebrush conservation strategy—Challenges to sagebrush conservation, U.S. Geological Survey Open-File Report 2020–1125 (2021), https://doi.org/10.3133/ofr20201125, 90.

[10] Remington et al., Sagebrush conservation strategy—Challenges to sagebrush conservation, 79.

[11] Remington et al., Sagebrush conservation strategy—Challenges to sagebrush conservation, 99.

The BLM should closely coordinate with the FWS to ensure that its final RMPAs and RODs provide adequate regulatory measures to maintain the GRSG's not warranted status.

As a result of changes between the 2015 RMPAs and the GRSG conservation approaches contemplated by the draft EIS, such as those discussed above, the FWS' 2015 not warranted determination can serve only as a limited guide for the BLM is attempting to design conservation measures that will conserve GRSG and keep the species off the lists of threatened and endangered species. This is another reason why a broader management approach focused on intact landscapes makes sense.

However, even as it manages for intact landscapes, the BLM should also be considering the ESA status of the GRSG. To do so will require close coordination with the FWS, as occurred throughout the 2015 planning process. To that end, we urge the BLM to work closely with the FWS as it identifies land allocations and management actions to carry forward to the final EIS and subsequent RMPAs and RODs. The BLM and its partners have made an incredible investment of time and resources in GRSG conservation, including this planning process. For the species to nonetheless decline to the point of listing would be a tragic outcome not just for the species but for the agency and for countless people and communities who have contributed to conservation efforts for this species.

Apply a consistent management approach.

Application of the 2015 GRSG management plans has not only been incomplete, it has also been inconsistent across state lines. This was recognized in the 2015 planning process but accepted as a political necessity. Many aspects of the 2015 GRSG plans relied on state laws and policies or complex procedures that were subject to different implementation across BLM offices. Examples include lek buffer distances, compensatory mitigation approaches, and adaptive management.

GRSG do not recognize or respond differently across state lines. One of the strengths of the draft EIS is that it overwhelmingly applies the same management actions to the same land allocations across the species' range, which will promote consistency and efficiency in managing GRSG. It will also increase transparency, because stakeholders, including members of the public, will be able to look at BLM's approach in one state and be informed regarding what they can expect to see in another state.

Create durable management solutions.

We believe that one of the most important goals for this planning process should be to put an end to the politically driven back-and-forth that has characterized the last 8+ years of GRSG conservation. No one is well served by completing plans, litigating them, revising them, litigating them again, returning to earlier management approaches, starting a third planning process, etc. Not the agency, not industry, and not other public lands users and stakeholders such

as our organizations and members. And least of all the GRSG itself. The 2015 GRSG plans were expected to be implemented for *at least* 20 to 30 years,[12] but instead they were (initially) implemented for less than 4 years, and some aspects, such as SFA mineral withdrawals, were never implemented.

If the BLM creates the most comprehensive and highest-quality GRSG management plans imaginable, but a future administration throws them out and starts over, this process will have been a failure. Alternatively, if the agency allows a race to the bottom characterized by large variations across state lines and many concessions to development, and a court invalidates the plans, this process will have been a failure. Such is the needle that the BLM must thread, and it must do so while ensuring that the GRSG is effectively conserved.

We believe that this is possible.

Discussion of alternatives and identification of GRSG habitat management areas (HMAs).

We recommend that the BLM map HMA based on the best available science; exclude discretionary activities including wind, solar, and major ROWs from PHMA; allow criteria-based management in non-habitat within HMA if no indirect or direct impacts to GRSG result; and provide for the strictest management in high-value "best of the best" areas that could be designated as areas of critical environmental concern (ACECs).

No single identified alternative will achieve the goals of effective and durable GRSG conservation.

We do not believe that the BLM's preferred alternative, alternative 5, is sufficiently protective of GRSG, and we urge the agency to strengthen it as it completes a final EIS and RMPAs/RODs. Furthermore, we are unable to recommend any other single alternative as the best approach for GRSG management. Fortunately, the BLM is not required to select a specific alternative as it develops RMPAs and RODs. As the draft EIS notes, the agency "may select various goals, objectives, allocations and management prescriptions from each of the alternatives analyzed in the Draft RMPA/EIS."[13] This allows the BLM to "select the best strategy that incorporates appropriate GRSG habitat management actions to meet the RMP goals and objectives, is consistent with the purpose and need, is in accordance with the agency's mandate to manage the public lands for multiple use and sustained yield, and aligns with state and local plans and policies to the extent possible."[14] The only alternatives that must not be included are alternatives

[12] 12-Month Finding on a Petition To List Greater Sage-Grouse (Centrocercus urophasianus) as an Endangered or Threatened Species, 80 Fed. Reg. at 59892 (emphasis added).
[13] Draft EIS, 2-7.
[14] Draft EIS, 2-7.

1 and 2. Given recent declines in GRSG populations, it does not make sense to implement the management plans outlined in alternatives 1 and 2 that are weaker than the 2015 plans. The strategy management plans outlined in alternatives 4 and 5 have the best ideas to reverse the downward tread of GRSG. In addition, we recommend a handful of ideas from alternative 3 relating to the identification of high-value "best of the best areas," which could be designated as ACECs, although such areas should be more targeted than those proposed under alternatives 3 or 6.

Below, we highlight some of the broad, range-wide issues in the alternatives that cut across various land allocations. Individual allocations are discussed in more detail later in these comments.

The BLM should designate a small number of high-value areas as ACECs.

In areas that are identified as the "best of the best" GRSG habitat, efforts need to be made to ensure these areas are excluded from all possible habitat degradation. These areas should be provided with even higher levels of protection, as the BLM proposes to do with ACECs identified under alternative 6. In Nevada, an area that would quality as "best of the best" would include portions of the Owyhee-Jarbidge area.

To protect the relevant and important values of these highly-targeted areas, special management prescriptions are needed, which could include the following:

● Designate as ROW exclusion areas, including prohibiting renewable energy generation sites and transmission lines;
● Recommend withdrawal from mineral entry;
● Close to leasing or allow leasing only with no surface occupancy with no exceptions, waivers, or modifications;
● When the primary term for existing leases end, allow the leases to expire;
● When reviewing new applications for permits to drill (or APD extensions), condition approval contingent upon both lease terms and ACEC management direction;
● Close to construction of new roads;
● Designate as seasonally closed to motor vehicle use, limited to motor vehicle use on designated routes, or limited to mechanized use on designated routes;
● Close to mineral material sales;
● Designate as Visual Resource Management Class I or II;
● Restrict construction of new structures and facilities unrelated to the preservation of GRSG and not necessary for the management of uses allowed under the land use plan; and
● Retain public lands in federal ownership.

Adopting the three-tiered approach of GHMA, PHMA, and "best of the best" will best allow the BLM to meaningfully protect the most important areas for GRSG conservation while allowing other important uses of BLM-managed lands in less sensitive areas, and so meet the agency's multiple-use obligations.

We support NSO and other appropriate stipulations for geothermal energy development.

Most forms of renewable energy will be addressed in section IX of these comments. Geothermal energy, however, is a fluid-based underground resource similar to oil and gas. Geothermal facilities draw water from deep underground where high ambient temperatures can be found, extract the heat energy from the water, and then return the water to the earth. Geothermal exploration and operations use technologies similar to both oil and gas development (bore holes, surface pumps, etc.) and renewable energy projects (transmission lines, gen-ties), all of which have adverse impacts on GRSG.[15]

On BLM-managed lands, geothermal energy is managed as a fluid mineral like oil and gas, and with minor exceptions is subject to the same management approach, including stipulations. Under both alternatives 4 and 5, the draft EIS would apply NSO stipulations to geothermal development in PHMA in every state (unlike oil and gas, where Wyoming PHMA would not be NSO under alternative 5), and other, less restrictive, stipulations in GHMA.

Geothermal energy development is currently experiencing an explosion of interest, especially in Nevada, including in northeastern Nevada where high-potential areas extensively overlap PHMA.[16] Under the 2008 Final Programmatic Environmental Impact Statement (PEIS) for Geothermal Leasing in the Western United States, 143 million acres of BLM-managed lands were identified as suitable for geothermal development.[17] Initial utilization of this resource for clean energy was slow, but is now gaining momentum. In 2022, the BLM approved five new geothermal projects (3 in Nevada, 1 each in California and Utah),[18] and in 2024 the BLM adopted from the U.S. Forest Service and U.S. Navy two categorical exclusions (CEs) allowing geothermal exploration operations on BLM lands without additional NEPA review.[19]

Adverse impacts to GRSG populations are not limited to geothermal energy operations but can also occur as a result of geothermal exploration. Especially because geothermal resources are

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[15] For discussion of geothermal impacts on GRSG, see Peter S. Coates, Brian G. Prochazka, Shawn T. O'Neil, Sarah C. Webster, Shawn Espinosa, Mark A. Ricca, Steven R. Mathews, Michael Casazza, and David J. Delehanty, "Geothermal energy production adversely affects a sensitive indicator species within sagebrush ecosystems in western North America," *Biological Conservation* 280 (April 2023): 109889, https://www.sciencedirect.com/science/article/pii/S0006320722004426; Alexandra Weill, "Buildings maps to help geothermal energy and greater sage-grouse coexist in Nevada's sagebrush country," *U.S. Geological Survey*, March 6, 2023, https://www.usgs.gov/news/featured-story/building-maps-help-geothermal-energy-and-greater-sage-grouse-coexist-nevadas.

[16] See draft EIS, 3-36.

[17] Bureau of Land Management and U.S. Forest Service, Final Programmatic Environmental Impact Statement (PEIS) for Geothermal Leasing in the Western United States, October 2008, https://www.blm.gov/sites/blm.gov/files/Geothermal_PEIS_final.pdf.

[18] US Department of Interior, Bureau of Land Management. Public Land Renewable Energy – Fiscal Year 2022 [Factsheet].

[19] Bureau of Land Management, "BLM adopts categorical exclusions to expedite geothermal energy permitting," press release, April 15, 2024, https://www.blm.gov/press-release/blm-adopts-categorical-exclusions-expedite-geothermal-energy-permitting.

concentrated in the desert southwest, even exploration could lead to severe local impacts on specific GRSG populations. Only rigorous project-level NEPA analysis can give the BLM and the public the necessary insight into those impacts to determine if a specific project should go forward or not.

We support the BLM's management approach to geothermal energy development, especially NSO stipulations for all PHMA. As with the oil and gas industry, we urge the agency to apply the best science and require appropriate (minimum 3.1-mile[20]) lek buffers in GHMA. We also ask that geothermal energy development be kept out of high-value seasonal habitats and connectivity corridors.

The draft EIS provides appropriate limitations on saleable minerals, non-energy leasable minerals, coal mining, and locatable minerals for the protection of GRSG.

In the context of other (non-energy) minerals, accurate mapping of the most important habitat (see section III of these comments) is essential to achieving the purposes of this planning process and the BLM's multiple-use mission. All types of surface-disturbing mining are destructive to GRSG habitat and damaging to GRSG populations.[21] We support the draft EIS's strong, protective approach to mining activities in GRSG habitat, especially PHMA, under both alternatives 4 and 5.[22]

We note that development of domestic sources of critical minerals is essential to meeting current goals for renewable energy development (see section IX of these comments) and addressing climate change. As such, it is essential the BLM strike a balance between competing land uses and meet its multiple-use obligations by protecting the most sensitive GRSG habitat while developing mineral resources in the best areas for that purpose. Given the dire situation of GRSG populations and the purpose of this planning process, where those values conflict directly, the BLM must favor GRSG conservation. We support numerous provisions of the draft EIS that do just that.

We support closure of PHMA to saleable mineral development, excluding free use permits and expansions of existing pits, but we urge that those exclusions be used sparingly. We support closure of PHMA to non-energy leasable minerals, again urging that exceptions in California, Idaho, Nevada, and Wyoming be used sparingly.

For states where coal is present, we recognize the need to adopt a flexible approach that evaluates the suitability of a specific site for a specific coal mining method. However, we urge the BLM to be exceedingly thorough in project-level NEPA analysis, and extremely cautious when authorizing development. Because accessible coal deposits are highly localized, there is a risk of acute effects in one area destroying essential GRSG habitat, reducing habitat connectivity,

[20] See Manier et al., Conservation buffer distance estimates for Greater Sage-Grouse—A review.
[21] See generally Remington et al., Sagebrush conservation strategy—Challenges to sagebrush conservation, 163-72.
[22] See draft EIS, 2-14 through 2-19.

and undermining goals for species recovery. To address this, it is essential that the BLM apply disturbance caps at the correct scale (see section VIII of these comments) to avoid excessive development impacts in important GRSG areas.

Locatable mineral management is an area of comparative weakness in the draft EIS, if only because the BLM's intentions are unclear. As previously explained (see section II.C.1 of these comments), the BLM never completed the withdrawal from mineral location and entry that was planned for SFAs in 2015 and relied upon by the FWS in its not warranted finding. Instead, that process is ongoing, with new NEPA documents expected later this year. Under alternative 3, the BLM would recommend all GRSG HMAs for withdrawal. Under alternatives 4 and 5, the draft EIS is silent on any potential mineral withdrawal, noting only that one area of Montana has already been withdrawn.[23] Consistent with the approach articulated in section III of these comments, recommending that the BLM protect the most important areas of GRSG habitat more highly than other PHMA, we request that the BLM advance such areas for withdrawal from location and entry.

We support the approach under alternative 4 of excluding renewable energy infrastructure from important GRSG habitat.

Renewable energy development is a challenging issue for GRSG conservation, due to exploding demand for renewable energy across the range, including from wind and solar and increasingly geothermal sources, and the associated need for new transmission lines. Renewable energy development is a high priority for many states, as well as the federal government.

At the federal level, Executive Order 14008 and the Energy Act of 2020 (Pub. L. 116-260, Division Z) direct the BLM to prioritize renewable energy deployment on public lands, and the agency is currently developing a final EIS for solar energy development across 11 western states (the Solar PEIS).[24] On May 1, 2024, the BLM issued its final rule on Rights-of-Way, Leasing, and Operations for Renewable Energy.[25] The Biden Administration has met and is on its way to exceeding its goal of permitting 25 gigawatts of onshore renewable energy on public lands by 2025,[26] and in Fiscal Year 2022 the BLM permitted 5,670 megawatts of onshore renewable energy, nearly doubling Fiscal Year 2021.[27] The Inflation Reduction Act of 2022 (Pub. L. 117-

[23] Draft EIS, 2-16.
[24] Bureau of Land Management, Solar Energy, accessed May 14, 2024, https://www.blm.gov/programs/energy-and-minerals/renewable-energy/solar-energy.
[25] Rights-of-Way, Leasing, and Operations for Renewable Energy, 89 Fed. Reg. 35634 (May 1, 2024).
[26] Scott Streater, "BLM on pace to exceed 25K-megawatt renewable energy goal," *E&E News*, April 20, 2022, https://subscriber.politicopro.com/article/eenews/2022/04/20/blm-on-pace-to-exceed-25k-megawatt-renewable-energy-goal-00026578.
[27] US Department of Interior, Bureau of Land Management. Public Land Renewable Energy – Fiscal Year 2022 [Factsheet], accessed May 14, 2024, https://www.blm.gov/sites/default/files/docs/2023-12/FY22%20Report%20to%20Congress%20Fact%20Sheet.pdf.

169) reduced rents and extended tax incentives for the wind and solar industries until at least 2034, while grants under the Infrastructure Investment and Jobs Act (Pub. L. 117-58) are funding projects. As a result, the financial outlook for these sectors is likely to remain very strong, accelerating the renewable energy growth that is already taking place across the West.[28]

These initiatives are bearing fruit, causing a noticeable impact on the range. At present, on BLM-managed lands there are 383,833 acres of proposed wind, solar, and geothermal projects (including gen-ties) as well as 182,780 acres in NEPA review and 201,053 acres in preliminary review.[29]

The impacts of renewable energy development on GRSG, like other forms of infrastructure, are considerable. Renewable energy infrastructure generally has a large footprint per megawatt (especially solar energy), tall structures (especially wind and transmission lines), and is characterized by ground disturbance such as road construction, site clearing, grading, vegetation and soil removal, etc.[30] Although vegetation may be restored following construction and/or decommissioning of renewable energy facilities, our understanding of how much GRSG respond to the presence/absence of vegetation vs. artificial structures themselves is still evolving.[31]

Renewable energy infrastructure impacts GRSG populations in similar ways to other energy and related infrastructure on the landscape. This was recently validated by a meta-analysis of 21 other studies that concluded that there are no "obvious differences in the effect sizes between types of infrastructure" and therefore "current grouse conservation actions could be applicable to renewable energy development."[32]

GRSG responses to wind energy development are a case in point. In Wyoming, lek counts declined more severely near wind infrastructure, after a 3- or 5-year time lag, than non-impacted leks. Effects of wind infrastructure on lek attendance were weakly evident within 1.5 km (0.93 miles) from a turbine.[33] In an additional study at the same location, females and their chicks used

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[28] E.g. M. Booth, "What's driving sudden flare of solar energy and storage in Colorado?", *Colorado Sun*, June 21, 2023, https://coloradosun.com/2023/07/21/colorado-renewable-energy-surge-project-growth/.

[29] See Bureau of Land Management, Active Renewable Projects, accessed May 9, 2024, https://www.blm.gov/programs/energy-and-minerals/renewable-energy/active-renewable-projects. See also U.S. Solar Photovoltaic Database, https://eerscmap.usgs.gov/uspvdb/viewer/#3/37.25/-96.25.

[30] See generally Remington et al., Sagebrush conservation strategy—Challenges to sagebrush conservation, 172-76. It should be noted that our understanding of the impact of wind and other renewable energy sources on GRSG is still evolving. See, e.g., John D. Lloyd, Cameron L. Aldridge, Taber D. Allison, Chad W. LeBeau, Lance B. McNew, and Virginia L. Winder, "Prairie grouse and wind energy: The state of the science and implications for risk assessment," *Wildlife Society Bulletin* 2022: e1305, https://doi.org/10.1002/wsb.1305.

[31] For example, recent research suggests that GRSG populations can tolerate the presence of a solar energy facility, see Michael B. Gerringer, Kurt T. Smith, and Karl L. Kosciuch, "Observations of Greater Sage-Grouse at a solar energy facility in Wyoming," *Western North American Naturalist* 82(1) (2022); 196-200, but more research will be needed to see if that population is able to sustain itself over time. As we have previously observed, avoidance behavior is not immediate, but occurs over time as yearlings abandon impacted areas.

[32] C. LeBeau, K. Smith, S. Howlin, A, Tredennick, and K. Kosciuch, "A meta-analysis investigating the effects of energy infrastructure proximity on grouse demography and space use," *Wildlife Biology* 2023(5) (2023), e01087.

[33] C. W. LeBeau, J. L. Beck, G. D. Johnson, R. M. Nielson, M. J. Holloran, K. G. Gerow, and T. L. McDonald, "Greater sage-grouse male lek counts relative to a wind energy development," *Wildlife Society Bulletin* 41(1) (2017): 17–26, https://doi.org/10.1002/wsb.725.

brood-rearing and summer habitats farther from wind infrastructure than what was previously documented.[34]

Accordingly, renewable energy development in GRSG habitat should be approached with similar caution as oil and gas development. Furthermore, most types of renewable energy development presently lack widely-accepted best management practices.[35] This is another reason to take a cautious approach to allowing renewable energy development in important GRSG habitat.

Based on studies such as the BLM's own analysis in the Solar PEIS, other existing reasonably foreseeable development scenarios (RFDS), and projections for various types of renewable energy development, we believe that there is more than enough BLM-managed land available to accommodate the necessary renewable energy development expected in the foreseeable future without making important GRSG habitat available.

For these reasons, we support the approach proposed for wind and solar energy in alternative 4 of the draft EIS, and ask the BLM to close all GRSG PHMA to renewable energy development. This will further the approach of supporting GRSG populations by managing BLM land for intact landscapes. In addition, locating renewable energy development in areas with no to low conflict with GRSG will enable faster permitting and simpler project-level NEPA review for renewable energy projects.

We also support alternative 4's approach to GHMA, which would be managed as avoidance areas for wind and solar development, bolstered by lek buffers and protection for high-value seasonal habitats and connectivity corridors. It also includes a habitat buffer, where GHMA within 0.5 miles of PHMA would be managed as exclusion areas. This is a strong approach to preventing indirect and cumulative impacts from wind and solar development within GHMA from impacting GRSG populations in PHMA. However, we recommend that this habitat buffer be larger, reflecting the best available science on avoidance distances for various renewable energy resources.

In contrast, alternative 5 takes a much weaker approach, managing PHMA as avoidance areas, with limited additional protections available for breeding, nesting, and high-value seasonal habitats, limited by exceptions. GHMA would be open to development, subject only to minimization and compensation measures. Renewable energy development is one of relatively few areas of the draft EIS where alternative 5 is dramatically less protective than alternative 4, and we

[34] C. W. LeBeau, G. D. Johnson, M. J. Holloran, J. L. Beck, R. M. Nielson, M. E. Kauffman, E. J. Rodemaker, and T. L. McDonald, "Greater sage-grouse habitat selection, survival, and wind energy infrastructure," *Journal of Wildlife Management* 81(4) (2017): 690–711, https://doi.org/10.1002/jwmg.21231.

[35] A notable exception is the wind industry, for which there is the FWS' Land-Based Wind Energy Guidelines. U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines, March 23, 2012, https://www.fws.gov/sites/default/files/documents/land-based-wind-energy-guidelines.pdf. In addition, for solar energy development, numerous states have developed their guidelines. See, e.g. Association of Fish and Wildlife Agencies, "Solar Wildlife Working Group," accessed March 5, 2024, https://www.fishwildlife.org/afwa-acts/afwa-committees/solar-wildlife-working-group. However, no renewable energy industry presently has anything like the "Gold Book" for oil and gas development. See Bureau of Land Management, The Gold Book: Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development, 2007, available at https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/operations-and-production/the-gold-book.

urge the BLM to adopt the wind and solar energy development provisions laid out under alternative 4.

In the following subsections, we provide additional observations and recommendations relevant to wind and solar energy. We also discuss transmission lines, while geothermal was discussed in more detail with other fluid minerals in section VII.F.

Wind energy development and GRSG.

The BLM estimates that approximately 20 million acres of BLM-managed land have wind energy potential.[36] To date, 2600 wind turbines have been constructed on BLM-managed lands, but just 288 of them have been constructed within GRSG habitat. However, wind energy development is accelerating. The Department of Energy forecasts that by 2050, the nation will have 404.25 GW of wind energy in service, an increase of over 290 GW compared to 2020.[37] For onshore wind in BLM states, the largest growth would be in Montana, followed by Wyoming.[38]

GRSG persistence is largely inconsistent with wind energy development. Research indicates that GRSG avoid wind turbines.[39] For this reason, we urge the BLM to adopt alternative 4 of the draft EIS for wind energy development.

Solar energy development and GRSG.

The BLM is currently in the process of moving from a draft to final EIS for its Solar PEIS planning process, which when complete will result in RMPAs that will govern utility-scale photovoltaic solar (hereinafter PV solar) energy development on BLM lands in all 11 western states.[40] As part of the Solar PEIS process, the BLM relied on the 2015 GRSG RMPAs and identified GRSG PHMA as a resource-based exclusion applicable to all action alternatives, providing that no PV solar development would be permitted in PHMA. Because the mapping of GRSG PHMA and whether or not solar energy development will be permitted in PHMA are among the issues being considered as part of this planning process, it is imperative that the BLM completes a final EIS and RMPAs/RODs for the GRSG that uses a science-based approach to identify GRSG PHMA and exclude those areas from solar energy development. That determination must then be applied to the Solar PEIS planning process as it is essential that these planning processes stay aligned. This approach is consistent with the 2015 GRSG RMPAs and is

[36] Bureau of Land Management, Wind Energy, accessed May 6, 2024, https://www.blm.gov/programs/energy-and-minerals/renewable-energy/wind-energy.
[37] U.S. Department of Energy, Map: Projected Growth of the Wind Industry From Now Until 2050, accessed May 6, 2024, https://www.energy.gov/map-projected-growth-wind-industry-now-until-2050.
[38] See U.S. Department of Energy, Map: Projected Growth of the Wind Industry From Now Until 2050.
[39] E.g. LeBeau et al. "Greater sage-grouse male lek counts relative to a wind energy development"; LeBeau et al., "Greater sage-grouse habitat selection, survival, and wind energy infrastructure."
[40] See Bureau of Land Management, BLM National NEPA Register: Utility-Scale Solar Energy Development PEIS/RMPA, accessed May 6, 2024, https://eplanning.blm.gov/eplanning-ui/project/2022371/510.

anticipated by the Solar PEIS, which found more than adequate land for PV solar development outside of PHMA.

This is important because the impacts of PV solar development on GRSG are significant. Although PV solar facilities are low-lying (except for meteorological towers), unlike wind turbines, they nonetheless have impacts upon GRSG. Although best practices are currently lacking, PV solar facility management typically includes vegetation removal, grading of the site, fencing, etc., all of which adversely impact and may even prevent GRSG utilization of the site. Accordingly, we support the exclusion of PV solar energy facilities from GRSG habitat. In particular, PHMA should be closed to PV solar, as under alternative 4 in the draft EIS.

We also note that, in the case of PV solar energy, recent research and planning documents make it clear that there is more than enough BLM-managed land with solar energy potential to site expected solar energy development outside of important GRSG habitat. As part of the Solar PEIS planning process, the BLM explained that under its RFDS, the agency expects to site PV solar developments on approximately 700,000 acres of BLM-managed land over the next 20 years.[41] The agency concluded that this land could be identified utilizing only land that was already disturbed and in close proximity (10 miles) to existing or planned transmission corridors, while respecting resource-based exclusions such as for GRSG. For the most part, such disturbed lands do not overlap GRSG habitat at all. To the extent that some important GRSG GHMA in places such as Wyoming was incorrectly identified as disturbed land in the Solar PEIS, many of the undersigned organizations submitted comments asking the BLM to correct that mapping. If that is done, the Solar PEIS will exclude PV solar development from both PHMA and important GHMA, achieving a level of GRSG protection consistent with that proposed under alternative 4 in the draft EIS while allowing PV solar development in disturbed areas within GHMA.

Transmission lines and GRSG.

One of the largest current challenges for renewable energy projects is delivering the electricity they produce to market. To facilitate this, the BLM has designated, and is currently revising,[42] 5,000 miles of energy corridors under Section 368(a) of the Energy Policy Act of 2005.[43] These corridors, some of which have already been developed with transmission lines and others of which are sites for proposed transmission lines, have significant effects on local wildlife resources. The towers that support power lines are tall structures that GRSG will avoid at a distance of 4 miles or more,[44] the conductor is a source of potential bird collisions (unless properly marked), and the corridor itself introduces a linear feature that fragments and bisects habitat. Depending on management, areas around transmission line towers and sometimes

[41] Bureau of Land Management, Draft Programmatic Environmental Impact Statement for Utility-Scale Solar Energy Development, Document #DOI-BLM-HQ-3000-2023-0001-RMP-EIS, accessed May 6, 2024, https://eplanning.blm.gov/public_projects/2022371/200538533/20102762/251002762/2023%20Draft%20Solar%20PEIS%20Volume%201%201-10-2024_508compliant.pdf, 2-34.
[42] See Bureau of Land Management, West-wide Energy Corridor Information Center, accessed June 6, 2024, https://corridoreis.anl.gov/.
[43] Bureau of Land Management, West-Wide Energy Corridors, accessed May 6, 2024, https://www.blm.gov/energy-corridors.
[44] See Manier et al., Conservation buffer distance estimates for Greater Sage-Grouse—A review.

between them may be kept clear of vegetation, may be locations for surface roads, and may become vectors for GRSG predators, invasive species, and wildfires.

The draft EIS addresses transmission lines as major ROWs (along with large pipelines). PHMA would be managed as avoidance areas under both alternatives 4 and 5, while GHMA would be open with minimization and compensatory mitigation criteria. For both PHMA and GHMA, alternative 4 would provide additional protections for breeding, nesting, and other high-value/limiting seasonal habitat, while alternative 5 would provide only compensatory mitigation.

We urge the BLM to adopt in the final EIS and RMPAs/RODs an approach *at least* as protective as alternative 4. Ideally, the BLM should use the existing and planned transmission lines recently identified in the Solar PEIS process to identify those corridors where transmission lines can be collocated to minimize habitat fragmentation and associated impacts. New transmission lines should not be authorized outside of utility corridors, nor should new corridors be placed within PHMA. For those locations where transmission lines already exist, or where valid existing rights necessitate construction of new gen-ties in GRSG habitat, the BLM should apply the avoidance criteria and additional protections for breeding, nesting, and other high-value/limiting seasonal habitat proposed under alternative 4.

The BLM must manage protected wild horses and burros to limit impacts on GRSG habitat.

Wild horses and burros are protected on public lands by the Wild and Free-Roaming Horses and Burros Act of 1971.[45] Free-roaming horses and burros are nonnative livestock that lack natural predators and can have detrimental impacts on native ecosystems and wildlife habitat. Native shrubs, grasses, forbs, and riparian areas are not adapted to the intense pressures of modern equine herds and are subject to degradation, soil erosion, and a loss of biodiversity from those herds that exceed the carrying capacity for certain ecosystems.

Wildlife habitat is declining in quality across many areas in the West due to the explosion of wild horse and burro populations, impacts that are being exacerbated by warmer and drier conditions as well as nonnative invasive plants. GRSG leks are particularly vulnerable to pressure from wild horses and burros, which disrupt lekking activity at greater levels than native ungulates.[46]

The BLM is charged with management of wild horses and burros, and to facilitate this the agency sets AMLs, which represent the number of horses and burros that can coexist with other

[45] Wild and Free-Roaming Horses and Burros Act of 1971, Pub. L. No. 92-195, 85 Stat. 649 (1971).
[46] E.g. Diana A. Muñoz, Peter S. Coates, and Mark A. Ricca, "Free-roaming horses disrupt greater sage-grouse lekking activity in the Great Basin," *Journal of Arid Environments* 184 (2021): 104304, https://eplanning.blm.gov/public_projects/2012689/200480865/20045030/250051218/Munoz%20et%20al.%202021.pdf.

resource uses on the same land.[47] As of the BLM's 2023 estimates, the horse and burro population across the range was 73,520, close to three times the "high" AML of 26,785.[48] Although every state but Idaho exceeded its high AML, the problem was by far the most acute in Nevada, where there were 38,023 horses and burros, over half the total, exceeding the "high" AML for the state of 12,811 by more than a factor of three.[49]

Persistent overpopulations of wild horses and burros adversely affect GRSG. Overuse by wild horses and burros reduces vegetation, causes habitat fragmentation, and can open rangeland up to invasive weeds.[50] Analysis recently completed by Coates et al. 2021 concludes that populations in excess of AMLs are associated with GRSG declines.[51] For every 50% increase in horse abundance over an AML, GRSG abundance is likely to decline by 2.6%.[52] When horse populations are double the established AML, there is a 76% probability of GRSG decline.[53] In contrast, "in areas where horse abundance was at or below currently established AMLs, impacts to sage-grouse population trends were consistent with areas where horses are absent on the landscape altogether. This suggests that the maximum AMLs are effective at neutralizing the adverse impacts that horse populations have on sage-grouse populations and that free-roaming horses have the potential to coexist with native wildlife under the right management approach."[54]

Any of the approaches proposed in the draft EIS, if successfully implemented, would address this issue, including the alternative 5 approach, management of wild horses and burros within the full range of AMLs. We support continued inclusion of GRSG habitat objectives in wild horse and burro management, adaptive management of wild horse and burro populations, and changes to AMLs as necessary.[55]

We recognize that managing wild horses and burros is challenging, and we urge the BLM to work with state governments, other federal agencies, political leaders, and other partners to find solutions that will lead to effective management of wild horses and burros and durable conservation for GRSG populations.

[47] E.g. Peter S. Coates, Shawn T. O'Neil, Diana A. Muñoz, Ian A. Dwight, and John C. Tull, "Sage-Grouse Population Dynamics are Adversely Affected by Overabundant Feral Horses," *Journal of Wildlife Management* 85(6) (2021): 1132-1149, https://wildlife.onlinelibrary.wiley.com/doi/10.1002/jwmg.22089.
[48] Bureau of Land Management, Herd Area and Herd Management Area Statistics, March 1, 2024, https://www.blm.gov/sites/default/files/docs/2024-03/2024_HMA-HA_PopStats_2-29-2024_COMBINED_Clean_FINAL_web.pdf.
[49] Bureau of Land Management, Herd Area and Herd Management Area Statistics.
[50] Coates et al., "Sage-Grouse Population Dynamics are Adversely Affected by Overabundant Feral Horses."
[51] Coates et al., "Sage-Grouse Population Dynamics are Adversely Affected by Overabundant Feral Horses."
[52] Coates et al., "Sage-Grouse Population Dynamics are Adversely Affected by Overabundant Feral Horses."
[53] U.S. Geological Survey, "When Unchecked, Free-Roaming Horse Populations Threaten Greater Sage-Grouse," press release, August 2, 2021, https://www.usgs.gov/news/national-news-release/when-unchecked-free-roaming-horse-populations-threaten-greater-sage.
[54] U.S. Geological Survey, "When Unchecked, Free-Roaming Horse Populations Threaten Greater Sage-Grouse."
[55] Draft EIS, 2-113 through 2-116.

The BLM must manage livestock grazing to conserve GRSG and meet rangeland health objectives.

Livestock grazing can have considerable impacts on GRSG, both beneficial and deleterious. Achieving positive outcomes depends on careful consideration of numerous factors. For example, researchers from the U.S. Geological Survey, Colorado State University, and Utah State University found that higher levels of grazing early in the growing season (before peak plant productivity) were associated with GRSG population declines, but similar high grazing levels later in the season corresponded with GRSG population increases.[56] In moister areas with greater plant productivity, in contrast, GRSG benefitted from intermediate grazing levels *early* in the season, and *not* from higher levels of grazing, even later in the season.[57]

Similarly, Richardson et al. 2023 found that grazing timing and intensity significantly impacts insect and plant availability, including species that provide GRSG with vital food sources.[58] The study concluded that grazing intensity was not necessarily detrimental to insect abundance: while beetle, butterfly, and ant populations shifted in various ways based on moisture levels, only beetles were impacted by grazing intensity, and their numbers *increased* with increased grazing pressure.[59] Overall, we now have over a decade of data and experience that can be applied to grazing management to secure positive outcomes for GRSG populations.[60]

Deleterious effects of poorly-managed grazing include increased heterogeneity in vegetative communities, habitat fragmentation, and increased invasive grasses.[61] The BLM must manage its grazing program, which encompasses 21,000 separate allotments across 155 million acres,[62] to minimize these deleterious impacts. Its chief tool for doing so are land health standards (LHS),

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[56] See U.S. Geological Survey, "Livestock grazing effects on sage-grouse," press release, March 21, 2017, https://www.usgs.gov/news/national-news-release/livestock-grazing-effects-sage-grouse-study-identifies-options-sustain-0.

[57] U.S. Geological Survey, "Livestock grazing effects on sage-grouse."

[58] William Richardson, Tamzen K. Stringham, Andrew B. Nuss, Brian Morra, and Keirith A. Snyder, "Shifts in sage-grouse arthropod food sources across grazing and environmental gradients in upland meadow communities," *Journal of Environmental Management* 348 (2023): 119261, https://www.sciencedirect.com/science/article/pii/S0301479723020492?via%3Dihub.

[59] Richardson et al., "Shifts in sage-grouse arthropod food sources across grazing and environmental gradients in upland meadow communities."

[60] See, e.g., Lorelle Berkeley, Joseph Smith, and Mark Szczypinski, Evaluating Sage-Grouse and Habitat Responses to Sage-Grouse Friendly Livestock Grazing Strategies: 3-yr Preliminary Findings, September 10, 2013, https://www.nrcs.usda.gov/publications/ceap-wildlife-2014-SageGrouse-response-LivestockGrazingStrategies.pdf; Lorelle Berkeley and Mark Szczypinski, Evaluation of Grazing Treatments Within the Sage grouse Initiative Program on Greater Sage grouse Habitat and Population Dynamics in central Montana, October 24, 2017, https://ecos.fws.gov/ServCat/DownloadFile/163619.

[61] E.g. Kyle A. Cutting, Emma C. Grusing, David Messmer, Sean R. Schroff, James A. Waxe, Aaron O'Harra, and Bok F. Sowell, "Heterogenous resources across sagebrush type are associated with components of offspring fitness in an avian habitat specialist," *Biological Conservation* 293 (2024): 110552.

[62] Bureau of Land Management, Livestock Grazing on Public Lands, accessed May 7, 2024, https://www.blm.gov/programs/natural-resources/rangelands-and-grazing/livestock-grazing; Public Employees for Environmental Responsibility, Rangeland Health and BLM Grazing Programs Factsheet, accessed May 7, 2024, https://peer.org/wp-content/uploads/2022/03/03-14-2022-Rangeland-Fact-Sheet.pdf.

which are designed to capture the regulatory fundamentals of rangeland health[63] and describe the conditions on the landscape that demonstrate health.[64]

Historically, the BLM has struggled to meet its obligations under the grazing program. Although 108 million acres have been assessed under the LHS, nearly 41 million acres have not been. 50% of assessed acres are not meeting LHS. In 72% of these, livestock grazing was a significant cause for not meeting LHS.[65] In Nevada, where rangeland resources are also under immense pressure from wild horses and burros, no allotments met LHS as of 2020, with livestock grazing identified as a contributing factor in approximately half of them.[66] However, grazing has been both a neutral and beneficial tool to help BLM reach its LHS obligations under the grazing program. In addition to historically well-managed grazing, outcome-based grazing, a new approach adopted in 2017 and in the pilot phase, has the potential to improve grazing management and rangeland health outcomes.[67]

In the draft EIS, the BLM describes two different approaches to grazing management for GRSG, neither of which are satisfactory. Under alternative 3, all GRSG HMAs would be closed to grazing. This approach is unnecessarily cautious and could negatively impact GRSG, because grazing can be an important rangeland management tool that can be strategically used to benefit GRSG (and other wildlife) provided that appropriate purpose, location, timing, duration, and intensity of grazing are taken into consideration.

Under alternatives 4 and 5, the BLM would make only minor adjustments to grazing leases, land health assessments (LHAs), and LHS in order to restore, maintain, or enhance GRSG habitat. Specific range-management actions would pertain to timing, intensity, duration, and frequency of grazing; application of the HAF to LHAs; specific adaptive management thresholds and responses to improve GRSG habitat suitability (required under alternative 4, optional under alternative 5); removal or modification of harmful range improvements; improved livestock management through technologies such as virtual fencing; removal of existing fencing; and the option of retiring grazing permits or leases when voluntarily relinquished.[68]

All of these tools identified in alternatives 4 and 5 are worthwhile and, if fully implemented, could improve rangeland management for GRSG while moving more BLM-managed rangelands towards compliance with LHS. We support responsible grazing within both PHMA and GHMA, provided that appropriate management actions are required. Ultimately, improvements to public land livestock grazing will only occur with the timely completion of LHAs, which requires appropriate staffing and implementation of the improvements made to the process by the Public Lands Rule, which are outside the scope of these plan amendments. For this reason, we support the approach taken in alternatives 4 and 5, rather than alternative 3. However, there are ample

[63] These are watersheds, ecological processes, water quality, and habitats. See 43 C.F.R. § 4180.1
[64] See Bureau of Land Management, Manual H-4180-1 – Randeland Health Standards, January 19, 2001, https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_h4180-1.pdf.
[65] Public Employees for Environmental Responsibility, Rangeland Health and BLM Grazing Programs Factsheet.
[66] Public Employees for Environmental Responsibility, Interactive BLM Rangeland Health Geospatial Data Portal, accessed May 7, 2024, https://mangomap.com/peer/maps/126421/blm-rangeland-health-status-2020-the-significance-of-livestock-grazing-on-public-lands?preview=true#.
[67] See Bureau of Land Management, Livestock Grazing on Public Lands.
[68] See draft EIS, 2-103 through 2-112. The draft EIS explains each of these approaches in much more detail.

opportunities for the BLM to improve its grazing program beyond those identified in the draft EIS. Based on the best available science, we suggest that the following approaches be considered when managing grazing in GRSG habitat:

- Targeted grazing, which could include seasonal use restrictions as well as limits on timing, frequency, duration, distribution, or intensity;
- Structural range improvements, which could include protection for undisturbed (not currently developed), naturally occurring springs and seeps; protective design features for artificial water sources; and targeted fence removal;
- Allowing qualified permittees or lessees to voluntarily relinquish grazing permits or leases;
- Giving priority to LHAs in GRSG habitat, resulting in identification and implementation of appropriate actions where current livestock grazing management has been identified as a causal factor in not meeting LHS; and
- Managing grazing in GRSG habitat to maintain important habitat features, such as residual forage for hiding cover (including seasonal limits or closures), suitable sagebrush cover and height, and cool season grasses, while controlling invasive annual grasses such as cheatgrass, ventenata, and medusahead.

All of the above should take into account the current and desired conditions of the landscape.

Conclusion.

This planning process – the third for GRSG since 2015 – comes at an incredibly important time. The 2015 RMPAs, which succeeded in the important goal of securing "not warranted" status for GRSG under the ESA, were never fully implemented. The BLM's subsequent attempt to open the plans and make them more agreeable to states did not withstand judicial scrutiny. It is our sincere hope that the BLM can now develop an approach that successfully balances GRSG conservation with other uses across the 69 million acres of GRSG habitat within the planning area. By doing to, the BLM will meet its multiple use obligations and create a durable approach that can be fully implemented over the coming years and decades.

Because additional legal controversy is likely, it is essential that the BLM's environmental review be thorough and fully comply with NEPA, FLPMA, and all other statutory and regulatory obligations of the agency. The undersigned organizations are dedicated to the careful and consistent application of the best available science in all wildlife and land management decisions. We thank you for your work on behalf of this species, and for the opportunity to submit these comments to help guide the BLM as it moves towards a final EIS and associated RMPAs/RODs.

Sincerely,

Russell Kuhlman
Executive Director
Nevada Wildlife Federation